

# EXHIBIT 1

## Item 39

**From:** Zachary Russell  
**Sent:** Wednesday, January 26, 2022 7:10 AM  
**To:** Lynda Calderon; 'jones.chambers@nysb.uscourts.gov'  
**Cc:** Benjamin Finestone; Emiliano Delgado; Eric Winston; Justin Griffin; Scott Lucy; Amanda Glaubach; Brian Shaughnessy; Kyle Ortiz; Frank Oswald; Eitan Blander; mjedelman@vedderprice.com; sgreissman@whitecase.com; JVandermark@VedderPrice.com; Robert.Johnson@CliffordChance.com; christopher.giaino@squirepb.com; nava.hazan@squirepb.com; Asher Griffin  
**Subject:** In re JPA No. 111 Co. Ltd. - Loechteken Deposition Designations.pdf  
**Attachments:** In re JPA No. 111 Co. Ltd. - Loechteken Deposition Designations.pdf

Dear Judge Jones,

Please find attached the deposition designations for Heinrich Loechteken that the parties are submitting in lieu of a live adverse direct examination. The green highlights constitute FitzWalter's designations, the yellow highlights are the Debtors' counter-designations, and the blue highlights are FitzWalter's rebuttal designations. While some of the highlighted material contains objections that were lodged during the deposition, none of the parties are pressing any objections with respect to the designations.

Thank you,

**Zachary Russell**  
*Associate*  
**Quinn Emanuel Urquhart & Sullivan, LLP**

51 Madison Avenue, 22nd Floor  
New York, NY 10010  
212-849-7531 Direct  
212-849-7000 Main Office Number  
212-849-7100 FAX  
[zacharyrussell@quinnemanuel.com](mailto:zacharyrussell@quinnemanuel.com)  
[www.quinnemanuel.com](http://www.quinnemanuel.com)

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE: :  
 : CHAPTER 11  
JPA NO. 111 CO., LTD., AND :  
JPA NO. 49 CO., LTD., : CASE NO. 21-12075 (DSJ)  
 :  
 :  
 :  
 : Debtors.

VIDEOTAPED DEPOSITION OF HEINRICH LOECHTEKEN

AMSTERDAM, NORTH HOLLAND, NETHERLANDS

SUNDAY, JANUARY 23, 2022

(Reported Remotely)

REPORTED BY: TANYA L. VERHOVEN-PAGE,  
CCR-B-1790

TSG JOB #: 205478

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January 23, 2022

2:42 p.m.

Videotaped deposition of

HEINRICH LOECHTEKEN, held in Amsterdam,  
North Holland, Netherlands before Tanya L.  
Verhoven-Page, Certified Court Reporter  
and Notary Public of the State of Georgia.

APPEARANCES OF COUNSEL

On behalf of the Debtors:

TOGUT, SEGAL & SEGAL  
One Penn Plaza  
New York, New York 10119  
BY: BRIAN SHAUGHNESSY, ESQ.  
AMANDA GLAUBACH, ESQ.  
(Via Zoom)

On behalf of FitzWalter Capital Partners (Financial  
Trading) Limited:

QUINN EMANUEL URQUHART & SULLIVAN  
865 S. Figueroa Street  
Los Angeles, California 90017  
BY: JUSTIN GRIFFIN, ESQ.  
(Via Zoom)

QUINN EMANUEL URQUHART & SULLIVAN  
51 Madison Avenue  
New York, New York 10010  
BY: ZACHARY RUSSELL, ESQ.  
(Via Zoom)

APPEARANCES OF COUNSEL

On behalf of JP Lease:

VEDDER PRICE  
1633 Broadway  
New York, New York 10019  
BY: MICHAEL EDELMAN, ESQ.  
(Via Zoom)

THE VIDEOGRAPHER: Lem Lattimer

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I N D E X

WITNESS: HEINRICH LOECHTEKEN

Examination	Page
BY MR. GRIFFIN	9

EXHIBITS:

Loechteken Deposition Exhibit	Description	Page
Exhibit 1	Supplemental Loechteken Declaration, Document No. 78	25
Exhibit 2	Loechteken Declaration, Docket No. 44	64
Exhibit 3	Proceeds agreement for MSN 111 and JPA No. 111 and MSN-067	126
Exhibit 4	Document bearing Bates numbers JPA111-00000476 through JPA111-000000479	150
Exhibit 5	111 Intermediate Lessor Security Assignment	154
Exhibit 6	Asset Purchase Agreement submitted as Exhibit D, Docket No. 58-5	175

EXHIBITS:

Loechteken  
Deposition

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Description

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Exhibit 7

2022-1-21 QE Letter  
with Debtors Request  
to Pursue

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Exhibit 8

2021.12.31 Docket 21  
A-1 Bidding Procedures  
Order

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1 H. LOECHTEKEN

2 AMSTERDAM, NORTH HOLLAND, NETHERLANDS;

3 SUNDAY, JANUARY 23, 2022

4 2:42 P.M.

5  
6 P R O C E E D I N G S

7  
8 THE VIDEOGRAPHER: Good morning,  
9 Counselors. My name is Lem Lattimer. I  
10 am a legal videographer in association  
11 with TSG Reporting, Inc.

12 Due to the severity of COVID-19 and  
13 following the practice of social  
14 distancing, I will not be in the same  
15 room with the witness. Instead, I will  
16 record this videotaped deposition  
17 remotely. The reporter, Tanya Page, also  
18 will not be in the same room and will  
19 swear the witness in remotely.

20 Do all parties stipulate to this  
21 video recording and remote swearing and  
22 that it will be admissible in the  
23 courtroom as if it had been taken  
24 following Rule 30 of the Federal Rules of  
25 Civil Procedures and the state's rules

1 H. LOECHTEKEN

2 where this case is pending?

3 MR. GRIFFIN: Yes.

4 THE VIDEOGRAPHER: Thank you. This  
5 is the start of media labeled number one  
6 of the video recorded deposition of  
7 Heinrich Loechteken in the matter of In  
8 Re: JPA No. 111 Co., LTD, et al., on  
9 January 23rd, 2022 at approximately  
10 3:43 p.m.

11 All appearances are noted on the  
12 record.

13 Will the court reporter please  
14 swear in the witness.

15  
16 Thereupon --

17 HEINRICH LOECHTEKEN,  
18 called as a witness, having been first duly sworn,  
19 was examined and testified as follows:

20  
21 MR. GRIFFIN: Are we ready to go or  
22 are you going to take appearances or -- I  
23 just want to make sure. Ms. Court  
24 Reporter?

25 (Discussion held off the record.)

H. LOECHTEKEN

EXAMINATION

BY MR. GRIFFIN:

Q Good morning, Mr. Loechteken. My name is Justin Griffin. I'm counsel for FitzWalter Capital Partners Financial Trading Limited.

Are you represented by counsel here today?

A Yes.

Q Okay. And that's Mr. Shaughnessy; is that correct?

A That's correct.

Q Okay. Have you ever been deposed before?

A No.

Q Before we start, I want to go through some ground rules just so we can all be on the same page.

Is that okay with you?

A Yeah, fine.

Q First of all, can you state and spell your name for the record.

A My name is Heinrich Loechteken, which is H-E-I-N-R-I-C-H, is the first name, and Loechteken, L-O-E-C-H-T-E-K-E-N, is the last name.

Q And where are you located today?

1 H. LOECHTEKEN

2 A I'm in Wassenaar, in the Netherlands.

3 Q First of all, I just want you to  
4 understand that you are under oath. The oath that  
5 you've taken is the same oath -- well, I guess have  
6 we --

7 (Discussion held off the record.)

8 BY MR. GRIFFIN:

9 Q First of all, I wanted you to understand  
10 that you're under oath. The oath you've taken is the  
11 same oath you would take if you were in a court of  
12 law and carries the same penalty of perjury.

13 Are you aware of that?

14 A Yes.

15 Q You notice we have a court reporter on  
16 the call today. All of my questions and all of your  
17 answers and any objections that your counsel or  
18 anybody else puts on the record will be transcribed  
19 by the court reporter.

20 You will have an opportunity to review  
21 the transcript and make corrections, but if you make  
22 changes, we will be able to comment on those changes.

23 Do you understand that?

24 A I understand.

25 Q We need audible answers. So a couple of

H. LOECHTEKEN

times you've nodded, which is not unexpected in normal conversations, but because we have a transcript we need audible answer, yeses or nos. Things like uh-huh or uh-uh is difficult for the court reporter to transcribe. So please do your best to give audible answers.

Do you understand that?

A Yes.

Q Again, because there's a court reporter, we should endeavor not to interrupt each other. So if you can please wait for me to finish my question and I'll endeavor to wait to finish your answer so we can have a clean transcript. Does that work?

A Yes.

Q I don't want you answering questions if you're unsure what's being asked. So if you don't understand a question, you can ask for clarification.

Can we agree that if you do not ask for a clarification that you do, in fact, understand the question?

A Yes, we can, if you give me a bit of time to think about it. Because I'm not a native speaker, it might take a little longer, especially if the English is a bit more complex for me to comprehend.

1 H. LOECHTEKEN

2 Q Understood, and obviously we want you to  
3 take the time to understand the question, so if you  
4 need a bit, just let us know.

5 A Okay.

6 Q I also don't want you to speculate or  
7 guess when answering, but I'm entitled to your best  
8 recollection and your estimate.

9 Does that make sense?

10 A Makes sense, yes.

11 Q Your counsel may make some objections or  
12 maybe some of the other counsel may make objections.  
13 You must respond to questions even if your counsel  
14 objects, unless you're instructed not to answer.

15 Do you understand that?

16 A I understand.

17 Q This is not an endurance test. So if you  
18 need to take break, just let me know. The only thing  
19 I ask is that if there is a question pending, that  
20 you provide an answer before we take a break.

21 A Understood.

22 Q And I think, generally, we'll take breaks  
23 around the hour to give the court reporter a chance  
24 to, you know, rest her -- you know, to rest her  
25 fingers.

1 H. LOECHTEKEN

2 Is there any reason, medical or  
3 otherwise, you cannot provide your most complete and  
4 honest testimony today?

5 A No.

6 Q Before we get started, is anybody else in  
7 the room with you?

8 A No.

9 Q Is your cell phone turned off?

10 A Yes.

11 Q Is there anything else up on your  
12 computer other than the Zoom and the exhibit share  
13 link, when we get that up and running?

14 A No, it just has the -- I have my e-mail  
15 open, obviously, because I need to watch for the  
16 e-mail to come in.

17 Q But you're not communicating with anybody  
18 else --

19 A No.

20 Q -- during the deposition; is that  
21 correct?

22 A That's correct.

23 Q I want to start with your preparations  
24 for the deposition today.

25 Did you meet with anybody to prepare?

1 H. LOECHTEKEN

2 A I did.

3 Q Okay. Who was that?

4 A Brian.

5 Q Is that -- when you're saying Brian,  
6 that's Mr. Shaughnessy?

7 A Yeah, Mr. Shaughnessy.

8 Q And when was that?

9 A That was on two occasions last week, and  
10 the last time yesterday.

11 Q So two occasions last week and then an  
12 additional one -- an additional one last week?

13 A No. Two occasions.

14 Q When was the first occasion?

15 A Friday evening.

16 Q For about how long?

17 A For about an hour and a half.

18 Q Was anybody else in that meeting?

19 A Yes.

20 Q Who else?

21 A Some other Togut lawyers.

22 Q So there was Mr. Shaughnessy and some  
23 additional lawyers from Togut?

24 A Correct.

25 Q And how many total attorneys?



H. LOECHTEKEN

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A If I recall correctly, three.

Q Do you know who the other Togut attorneys  
were?

A Kyle Ortiz, and I forgot the other name.

Q Were there any non attorneys, other than  
yourself?

A No.

Q And what about the other -- the second  
occasion, when was that?

A That was yesterday evening.

Q About how long?

A About two hours.

Q And who was involved in that prep?

A Again, Mr. Shaughnessy, Mr. Ortiz and one  
lawyer from -- Mike Edelman, a lawyer from Vedder  
Price.

Let me think. There was one more lawyer  
from Togut, but I forgot the name. Apologies.

Q Do you know whether Mr. Edelman  
represents the debtors in this case?

A Mr. Edelman represents us.

Q And when you say us, who are you  
referring to?

A JP Lease.

1 H. LOECHTEKEN

2 Q Are you here testifying on behalf of JP  
3 Lease or the debtors?

4 MR. SHAUGHNESSY: Objection. Calls  
5 for a legal conclusion.

6 BY MR. GRIFFIN:

7 Q You can answer.

8 A I think I'm here to represent on behalf  
9 of the debtors.

10 Q You understand that the debtors in these  
11 cases are JPA No. 111 and JPA No. 49?

12 A I understand that.

13 Q And JP Lease, you understand, is not a  
14 debtor in this case, correct?

15 A I understand that.

16 Q What is JP Lease's relationship to the  
17 debtors?

18 A JP Lease has set up the debtors. JP  
19 Lease has acquired the assets and puts them into the  
20 debtors. JP Lease has financed the assets with  
21 senior, as well as junior loans. JP Lease has been  
22 selling the equity in the debtors to its investors in  
23 Japan, and JP Lease manages the ongoing affairs of  
24 the debtors.

25 Q The reason -- I'm going to take some

1 H. LOECHTEKEN

2 notes.

3 MR. SHAUGHNESSY: Justin, do you  
4 have realtime?

5 MR. GRIFFIN: I do. I got an  
6 e-mail. Did you get that.

7 MR. SHAUGHNESSY: Hold on one sec.  
8 Sorry. I didn't know I received it.

9 THE WITNESS: I got one, as well.

10 MR. SHAUGHNESSY: You shouldn't  
11 look at it. It's for the lawyers.

12 THE WITNESS: Okay.

13 MR. SHAUGHNESSY: I'm sorry. Just  
14 give me a minute.

15 THE WITNESS: I'm sorry. I meant I  
16 got an e-mail from TSG Reporting.

17 MR. SHAUGHNESSY: I'm good.  
18 Thanks.

19 MR. GRIFFIN: Why don't we go off  
20 the record quickly so he can potentially  
21 get his password set up so when we go to  
22 the exhibits, if he needs to get an  
23 e-mail back.

24 MR. SHAUGHNESSY: Yeah, let's do  
25 that.

1 H. LOECHTEKEN

2 THE VIDEOGRAPHER: The time is  
3 3:55 p.m. We're off the record.

4 (Brief pause.)

5 THE VIDEOGRAPHER: The time is  
6 3:57 p.m., we're on the record.

7 MR. GRIFFIN: And just -- before we  
8 went off the record, there was a question  
9 about what e-mail Mr. Loechteken  
10 received, and it was an e-mail for the  
11 file share. It was not an e-mail for the  
12 realtime.

13 I just want to confirm that with  
14 you, Mr. Loechteken; is that correct?

15 THE WITNESS: I got you. Well, I  
16 got two e-mails. One is called  
17 Gabriella, from Gabrielle Allegro,  
18 Exhibit Link. It just came in, as well.  
19 I don't know what that means.

20 MR. GRIFFIN: Well, we have it set  
21 up. I just didn't want -- Brian asked --  
22 or Mr. Shaughnessy asked on the record --  
23 off the record that we confirm that you  
24 didn't have the realtime. So I just  
25 wanted to make sure that that was

1 H. LOECHTEKEN

2 accurate.

3 BY MR. GRIFFIN:

4 Q Okay. So we were discussing the second  
5 meeting -- prep meeting you had, which was yesterday.  
6 It involved three attorneys from the Togut firm and  
7 an attorney from the debtor firm, Mr. Edelman; is  
8 that correct?

9 A That's correct.

10 Q Did you review any documents during  
11 either of the meetings?

12 A Yeah, we reviewed my declaration.

13 Q Did you review any other documents during  
14 those -- either prep session?

15 A We briefly touched on the term sheet, the  
16 stalking horse bid term sheet, but it wasn't a full  
17 review.

18 MR. SHAUGHNESSY: And let me  
19 instruct the witness not to reveal any  
20 details about those prep sessions.

21 BY MR. GRIFFIN:

22 Q So you mentioned you reviewed your  
23 declaration and you reviewed a term sheet.

24 Did you review any other materials during  
25 that prep session that refreshed your recollection?

1 H. LOECHTEKEN

2 A We reviewed the information that was  
3 handed over as part of the discovery, the e-mails.

4 Q And when you say handed over during  
5 discovery, you're referencing the e-mails that were  
6 produced by the debtors; is that correct?

7 A I think so, that's correct.

8 Q Did you review any other information that  
9 refreshed your recollection?

10 A No, not that I remember.

11 Q You mentioned you said you reviewed the  
12 declaration. You've submitted a couple in this case  
13 and did you review a specific one, all of them, you  
14 know, a subset?

15 A I reviewed two. The first one --

16 Q Which two -- sorry. Which two?

17 A The one that was very recently filed and  
18 then the first declaration.

19 Q I believe that would be -- the first  
20 declaration is the one filed on January 10th?

21 A Tenth, correct.

22 Q And then the most recent one would be the  
23 supplemental declaration filed on the 21st; is that  
24 correct?

25 A That is correct.

1 H. LOECHTEKEN

2 Q When you said you reviewed the term sheet  
3 stalking horse, are you referring to the final or are  
4 you referring to the iterations?

5 A I'm referring to two -- it wasn't really  
6 a review, as I said. It was part of the documents  
7 that were handed over by the debtors, and there was a  
8 version -- there were two versions that were handed  
9 over. I think one that was the near final one and  
10 one that was an earlier version, a one-day earlier  
11 version.

12 Q And did any of these documents refresh  
13 your recollection about anything?

14 A Excuse me. Can you say again?

15 Q Did any of the documents refresh your  
16 recollection?

17 A Not really. A little bit, but not  
18 really. It was a fast-moving exercise where there  
19 was a lot of moving pieces and it was good to review  
20 this again just to kind of see chronology in order,  
21 but I think I would have, by and large, understood  
22 anyway.

23 Q Beyond those two prep sessions, did you  
24 do any preparation for the deposition on your own?

25 A I read the two declaration again.

1 H. LOECHTEKEN

2 Q Anything else?

3 A No.

4 Q So you didn't review any of the  
5 transaction documents relating to the -- to either of  
6 the financings; is that correct?

7 A You mean the original loan documents?

8 Q Yes.

9 A No.

10 Q Did you discuss the fact you were going  
11 to have a deposition with anybody outside of those  
12 two prep sessions?

13 A Just my wife.

14 Q Not including your wife. Any --

15 A Not including my wife? I discussed it --  
16 I didn't discuss it. I notified Vedder about it, but  
17 they would have known anyway, and I notified Teiji  
18 Ishikawa that I have the deposition today.

19 Q With respect to Mr. Ishikawa, what did  
20 you discuss with him?

21 A I did nothing to discuss with him. I  
22 was, essentially, last week on vacation so we didn't  
23 speak last week. I sent him an e-mail and said it  
24 was today.

25 Q And why did you notify Vedder?



1 H. LOECHTEKEN

2 A That it was --

3 MR. SHAUGHNESSY: Objection.

4 You can answer.

5 THE WITNESS: Vedder was on the  
6 call anyway, and I was asked by another  
7 lawyer and Vedder that wasn't --

8 MR. SHAUGHNESSY: Wait, wait. Hold  
9 on, hold on.

10 BY MR. GRIFFIN:

11 Q I don't want your --

12 MR. SHAUGHNESSY: I'm instructing  
13 the witness not to reveal any discussions  
14 with counsel.

15 THE WITNESS: Okay. Thank you.

16 It was just a notification.

17 BY MR. GRIFFIN:

18 Q And just so I have -- I'm trying to  
19 separate who's doing what here.

20 Is Vedder your attorney in this case or  
21 is Vedder of JPL or do you not draw any distinction  
22 between those two things?

23 MR. SHAUGHNESSY: Objection. Calls  
24 for a legal conclusion.

25 THE WITNESS: Am I still to answer?

1 H. LOECHTEKEN

2 MR. SHAUGHNESSY: Yes.

3 MR. GRIFFIN: You can.

4 MR. SHAUGHNESSY: You have to  
5 answer.

6 THE WITNESS: Vedder is the JPL  
7 lawyer. It's not my personal lawyer.

8 BY MR. GRIFFIN:

9 Q Excepting lawyers, did you have any  
10 e-mail communication with anyone about this  
11 deposition? I think you mentioned the e-mail to  
12 Mr. Ishikawa, but beyond that?

13 A I don't remember. But I certainly can --  
14 I don't remember.

15 Q All right. Let's get started with some  
16 exhibits. Let's see if this works.

17 The two declarations you said you  
18 reviewed were the January 10th and the January 21st;  
19 is that correct?

20 A That's correct.

21 Q Let's start with the -- the January 21st.

22 MR. SHAUGHNESSY: Mr. Griffin, just  
23 a request that if we're going to be  
24 jumping back and forth on documents, if  
25 the documents are labeled by exhibit

H. LOECHTEKEN

numbers, to refer to them as exhibit numbers so the witness doesn't get confused.

MR. GRIFFIN: That's fine with me.

I hope I put a document in the Submitted folder. Let's see if that works.

(Loechteken Exhibit No. 1 was marked for the record.)

BY MR. GRIFFIN:

Q Can you go to your Submitted folder and let me know if you see the document I'm marking as Exhibit No. 1, which is the Supplemental Loechteken Declaration, Document No. 78?

A Yes, I see that.

Q Can you open that document, please.

A Yeah, I have it open.

Q Are you familiar with this document?

A Yes.

Q What is this document?

A It's a supplemental declaration.

Q If you turn to the -- page four of the document, there's an electronic signature on behalf of you; is that correct?

1 H. LOECHTEKEN

2 A That is correct.

3 Q Okay. I think it says it was signed in  
4 New York, New York, but you weren't in New York when  
5 you signed that, were you?

6 A No.

7 Q And where were you when you signed it?

8 A The 21st? In Rome.

9 Q Did you review this document before  
10 submitting it?

11 A Yes.

12 Q And is it -- everything correct to your  
13 knowledge?

14 A Yes. To my best knowledge, everything  
15 correct.

16 Q I'm going to jump into the specifics of  
17 this document.

18 Can you please tell me what your  
19 relationship to the debtors in this case -- and by  
20 the debtors, you understand I mean JPA No. 111 and  
21 JPA No. 49, correct?

22 A Yes.

23 Q What's your relationship to the debtors?

24 MR. SHAUGHNESSY: Objection.

25 Vague.

1 H. LOECHTEKEN

2 THE WITNESS: I was specifically --

3 this might be a little longer

4 explanation.

5 I was specifically required by JP

6 Lease to be in-house asset manager. And

7 as in-house asset manager, after a

8 ramp-up period from 2020 onwards, we were

9 responsible for origination of all new

10 business, but also to see increasing size

11 of my team.

12 So JP Lease entity in Ireland was

13 involved in every other of the JPA

14 entities that JP Lease beforehand had

15 been put together. This includes both

16 tiers.

17 And involvement in this case means

18 we had regular calls, at least for more

19 than one year. We had weekly calls with

20 the full team in Tokyo, where accounts

21 and airline accounts are being discussed,

22 and I had numerous discussions with

23 Mr. Ishikawa over the phone, especially

24 during the last years on the

25 fast-evolving situations with Vietnam

1 H. LOECHTEKEN

2 Airlines.

3 BY MR. GRIFFIN:

4 Q And I think you mentioned -- you said  
5 that would have involved both entities -- JP entities  
6 that were in place before you started and JP entities  
7 after you started, correct?

8 A So both of those entities were in place  
9 before I started. There is a Sud Aircraft that is  
10 also -- that was also in place before I started.

11 But we had regular discussion. Because  
12 this is one large airline account, we had regular  
13 discussions and regular debate about what to do with  
14 the airlines, over the last year at least.

15 Q And you mentioned there's two JP entities  
16 that are the debtors. You mentioned a third JPA  
17 entity that's involved with Vietnam Airlines.

18 What is that entity?

19 A It's essentially a sister company. It  
20 does exactly the same. It leases an 8350 to Vietnam  
21 Airlines.

22 Q So there are three planes or three JP  
23 entities that are involved with Vietnam Airlines; is  
24 that correct?

25 A That's correct.

1 H. LOECHTEKEN

2 Q Do you know the MSNs for each of those  
3 planes?

4 A Yes, I do.

5 Q What are the MSNs?

6 A 67173 for the two ones we talk about, 150  
7 for the third one.

8 Q I think you mentioned that there were  
9 discussions with VNA over the last year. What were  
10 those discussions related to?

11 A So the discussions were, by and large,  
12 held by the Tokyo team and we were consulted in  
13 helping them to maneuver the past year receiver  
14 situation, form a view on what to do with the  
15 aircraft and, more specifically, my team was asked to  
16 help with the engine arrangement with Rolls-Royce,  
17 try to get the engines into a Rolls-Royce or LifeKey  
18 arrangement.

19 Q If I understand, you -- I think you said  
20 the Tokyo team was primarily responsible for the  
21 management of the relationship and that you were  
22 brought in to -- or your team was brought in to  
23 address issues surrounding the engines; is that  
24 correct?

25 MR. SHAUGHNESSY: Objection.

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2 You can answer.

3 THE WITNESS: Yeah, the engine, but  
4 also from the U.S., what to do with the  
5 aircraft. Should we try to keep the  
6 aircraft here, should we go and try to  
7 repossess ourselves. Should we -- what  
8 general course of action we should take?

9 BY MR. GRIFFIN:

10 Q When did those discussions start?

11 A At least 12 months ago.

12 Q So in and around January of 2021?

13 A Yes. The engine discussions started even  
14 earlier.

15 Q What were the options you were  
16 considering?

17 A We --

18 MR. SHAUGHNESSY: Objection.

19 THE WITNESS: We --

20 MR. SHAUGHNESSY: Hold on. I

21 instruct the witness not to answer to the  
22 extent it would reveal any legal advice  
23 or discussions with lawyers purely about  
24 legal issues.

25 THE WITNESS: So we -- we never



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contemplated a repossession, in

seriousness. We never contemplated to

sell the aircraft. We were just trying

to formulate a plan as to how to get best

through the situation with Vietnam.

We kept talking with Vietnam, we

kept talking with other leasing

companies. We knew that other leasing

companies were treated the same way as

us, which is demonstrated by the fact

that a large lessors, AerCap and ALC just

concluded in December last year their

restructuring arrangements.

So we were looking at internal --

internally looking at what would be a --

the cost of a repossession be, but didn't

even go there into great details simply

because it's so expensive and was so

uncertain with regard to a releasing of

the aircraft in the cold environment that

we never really considered this.

BY MR. GRIFFIN:

Q Just to back up for a second.

Why were these discussions going on at

1 H. LOECHTEKEN

2 all? Was there an issue with -- between the JPAs and  
3 Vietnam Airlines that necessitated these discussions?

4 A Vietnam Airlines was not paying  
5 regularly, and Vietnam Airlines had a payment plan  
6 and agreed but then they -- given that the COVID  
7 crisis was prolonged, quote, unquote, given that it  
8 took more time than they originally thought, they  
9 fell behind that.

10 Q So when did Vietnam -- VNA stop paying  
11 regularly?

12 A If I recall correctly, beginning of last  
13 year.

14 Q And before that, had there been  
15 discussions with VNM -- VNA? I think you indicated  
16 that there was a payment plan and they fell behind  
17 and I'm trying to get to the beginning of the point  
18 where there became issues that you got -- that the  
19 JPAs needed to address with respect to VNA and their  
20 payment.

21 MR. SHAUGHNESSY: Objection.

22 THE WITNESS: So the initial issue  
23 that there was the coverage on the  
24 LifeKey with Rolls-Royce, and that  
25 discussion started much earlier. So the

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risk, the tripartite, typically in place between the lessor and the airline and Rolls-Royce. And that tripartite agreement has -- gives the lessors rights to utilize the maintenance on the payments that Vietnam makes on the engine arrangement in case there is a problem, quote, unquote.

And given that these aircraft were acquired from airlines -- sorry -- from the source, that Artry (phonetic) didn't have a LifeKey arrangement in place, we wanted to include the engines under the LifeKey arrangement that my entity had negotiated with Rolls-Royce, or was about to negotiate.

And at that point in time, Rolls -- it took a long time. At that point in time, Rolls was not admitting any more -- the engines to join, simply because of the fact that Vietnam had already fallen behind with Rolls-Royce, as well.

BY MR. GRIFFIN:

Q So the first thing that happened is you

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2 were trying to get coverage on the engines and you  
3 wanted to add them to a policy, but VNA was already  
4 not paying Rolls-Royce and Rolls-Royce wouldn't  
5 accept the coverage that you were trying to obtain;  
6 is that correct?

7 A Yes.

8 MR. SHAUGHNESSY: Objection.

9 THE WITNESS: That's correct.

10 BY MR. GRIFFIN:

11 Q Were you ever able to work that issue  
12 out?

13 A No.

14 Q What was the next issue that arose?

15 A It was the unregular payments.

16 Q And when you say unregular payments, they  
17 just weren't paying the lease payments as required  
18 under the documents; is that what you're --

19 A That's correct. So, on average, they  
20 paid more -- if I recall correctly last year, more  
21 than 500K a month, but the lease rate on the face of  
22 it was higher, obviously.

23 Q When did the unregular payments begin?

24 A To my best recollection, beginning of  
25 last year.

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2 Q Prior to that, you deferred some payments

3 and worked out some agreements with VNA; is that

4 correct?

5 A I was not involved in that one.

6 Q Okay. So you weren't involved with

7 respect to the relationship with VNA and the payment

8 issues until early last year; is that correct?

9 A Correct.

10 MR. SHAUGHNESSY: Objection.

11 BY MR. GRIFFIN:

12 Q So with respect to the payment issues, I

13 think you indicated that VNA was paying \$500,000 a

14 month.

15 Was that every month they were paying

16 \$500,000 or they would make periodic payments that

17 aggregated to 500,000 if you -- if you do some math?

18 A It was more periodic. Over the year it

19 was over 500, but I don't recall exactly details as

20 to what they paid when.

21 Q Now -- and these unregular payments began

22 in January 2021; is that correct?

23 A If I recall correctly, yes.

24 MR. SHAUGHNESSY: Objection.

25 MR. GRIFFIN: Excuse me. I didn't

1 H. LOECHTEKEN

2 mean to interrupt you. I apologize.

3 THE WITNESS: No, no. I'm not a  
4 hundred percent sure. I think the last  
5 year was the year where it really started  
6 to be unregular, that I remember.

7 BY MR. GRIFFIN:

8 Q And is it your understanding that  
9 these -- failure to pay the full amount of the lease  
10 would have been a breach by VNA?

11 A Yes.

12 MR. SHAUGHNESSY: Objection.

13 BY MR. GRIFFIN:

14 Q Did you ever notify VNA that they were in  
15 breach?

16 MR. SHAUGHNESSY: Objection.

17 THE WITNESS: I, quite frankly,  
18 don't know, because that part was done --  
19 handled by Tokyo in conjunction with the  
20 arrangers that manage the direct airline  
21 relationship or manage the direct airline  
22 relationship until Tokyo took this by and  
23 large over.

24 BY MR. GRIFFIN:

25 Q Who would know?

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2 A My colleagues in Tokyo.

3 Q Including Mr. Ishikawa?

4 A Yes.

5 Q Anybody else?

6 A The Tokyo account manager.

7 Q Who was that?

8 A Mr. Shimamura.

9 Q You mentioned that, despite the breach by

10 VNA, you never seriously considered repossession or

11 sale of the assets; is that correct?

12 MR. SHAUGHNESSY: Objection.

13 THE WITNESS: That is correct.

14 BY MR. GRIFFIN:

15 Q Why not?

16 A Okay. Let me start with repossession.

17 The cost of a repossession in this environment are --

18 not only in this environment. The cost of a

19 repossession of a wide-body aircraft are quite high.

20 There's at least, I would guess, an upfront cost of a

21 minimum of 150,000 for consultants and additional

22 support as be needed to just get the aircraft. It

23 doesn't mean that the records can be retrieved

24 completely. The records have to be reconstructed.

25 It can easily go into the hundreds of thousands.

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2 The even bigger problem is that they're  
3 after all insurance, all storage, and the cost of  
4 taking the aircraft out of storage would be need to  
5 be born by the lessor. These numbers can easily go  
6 over and above one million dollars, because engines  
7 have to go -- due to the COVID environment, it would  
8 mean storage. To take this out we'd need to have  
9 Federal regulators or FAA to be -- it's a very costly  
10 process. Plus, bearing the insurance, it is very  
11 expensive.

12 Given that an aircraft then sits on the  
13 ground, it doesn't earn any revenue. It will have a  
14 stigma if it comes out. Everybody will know that the  
15 aircraft has been underground, so airlines will take  
16 advantage of it.

17 And most importantly in this environment,  
18 there is a weakness in the wide-body market, so any  
19 re-leasing activity for a highly spec aircraft would  
20 require the acceptance of power by the hour, at best,  
21 maybe even zero rent initially, plus considerable  
22 amount of reconfiguration for a wide body of that  
23 size.

24 This is easily \$15 million, easily, per  
25 aircraft, because the airline that wants to take the



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aircraft or would want to take the aircraft would want to have it in its specific C configuration with its galleys and so on. That would have lead time with the suppliers. It will have lead time -- as I said, lead time with the suppliers for proposed galleys, toilets, whatever, inside entertainment systems, seats and so on.

And then, thereafter, you have to probably take a very low lease rental. And the most important pieces that the airline that will take it will insist upon so-called top ups. If there are maintenance conditions that need to be rectified, if there are regular interval controls, the lessor would typically have to contribute. And we would not rule out -- that was our other big fear -- that the return conditions of the aircraft would be changed.

So, who needs a wide-body aircraft today? A repossession, in our view, is not a good strategy because of so much value being lost on the repo and so much value to be given to the airline that would take the aircraft over.

Q Did you have any discussion with VNA about repossession?

MR. SHAUGHNESSY: Objection. The

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2 witness personally or the company?

3 MR. GRIFFIN: Let's start with the

4 witness personally.

5 THE WITNESS: No.

6 BY MR. GRIFFIN:

7 Q Did the company have -- or do you know

8 whether the company had discussions with VNA about

9 repossession?

10 A I don't know.

11 Q Who would know?

12 A Mr. Ishikawa.

13 Q So that was the repossession piece. What  
14 about sale?

15 A That's even worse. Where do you go today  
16 to sell an A350? That would come out of -- where  
17 would he have gone? Today is slightly better,  
18 obviously, or to date is better. But where would you  
19 go and sell a naked aircraft that has no lease  
20 attached? This can only go to very distressed buyers  
21 that have equity return requirements of 25,  
22 30 percent, and that would diminish the value  
23 immediately.

24 Q When you say naked, what does that mean?

25 A Just in an aircraft without a lease

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2 attached. The value of an aircraft is determined by  
3 two components, the metal value and the lease, and it  
4 compounds. So it adds to each other.

5 Q Which is the more valuable aspect, the  
6 aircraft or the lease?

7 A It depends. I can't say. It depends on  
8 the longevity of the lease, depends on the lease  
9 rate. It depends on the return conditions, but I've  
10 seen wide-body leases with 25 million or \$30 million  
11 cash compensation at the, and I've seen wide-body  
12 leases that had way in excess of a hundred million  
13 dollars of lease that were collected over a period of  
14 time. So you could almost argue that all that  
15 together is the value of the aircraft.

16 Q What about for the -- the MSN 067, which  
17 is the more valuable aspect, the plane or the lease?

18 A I don't understand the question. You  
19 mean at this point in time, when the lease is  
20 defaulted, or just generally speaking?

21 Q Let's start with the lease is defaulted.

22 A When the lease is defaulted and there is  
23 no chance to get the lease reinstated and there is no  
24 chance that a Vietnam Airlines would be capable of  
25 entering into a new lease and retaining the aircraft,

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1  
2 then very clearly, from our perspective, from my  
3 personal perspective, the aircraft is more valuable  
4 than the lease claim. Because the lease claim will  
5 need to be fought over in court, will need to be  
6 granted by a court and would need to be then  
7 collected from Vietnam Airlines, and no normal lessor  
8 would do that.

9 MR. SHAUGHNESSY: I'm going to note  
10 for the record that I object to any lines  
11 of questioning that are outside the scope  
12 of the declarations and the sections of  
13 the declarations that I have discussed  
14 with counsel for FitzWalter. I will let  
15 the witness answer, but to the extent  
16 it's outside the scope of the  
17 declarations as noted with counsel, I  
18 object to avoid constant objections.

19 MR. GRIFFIN: I'll give you a  
20 standing objection on that. I  
21 understand.

22 BY MR. GRIFFIN:

23 Q So -- and just to clarify going back to  
24 your answer, I think you said that, in the situation  
25 where there is -- the lease is defaulted and the

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lease cannot be reinstated and Vietnam Airlines cannot enter a new lease or retain the aircraft, then the plane asset is the more valuable; is that correct?

MR. SHAUGHNESSY: Objection.

You can answer.

THE WITNESS: My personal view, because it's very simple. I, as a lessor, as a normal lessor who wants to have an ongoing relationship with Vietnam, will not go and collect a claim that I have to fight over. So I will try to avoid that situation. Every last lessor will do that. It needs distressed investors to force a sale.

BY MR. GRIFFIN:

Q So your prior answer, when you were trying to determine which is the more valuable aspect of the -- the -- strike that.

Your prior answer where you're determining whether the plane asset or the lease asset was more valuable was influenced by your role in the industry, meaning the role of your company as a lessor; is that correct?

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2 A Yeah --

3 MR. SHAUGHNESSY: Objection.

4 THE WITNESS: Yes, but it's also  
5 very dynamic.

6 BY MR. GRIFFIN:

7 Q Can you --

8 A The situation could be changing tomorrow.  
9 I mean not tomorrow, but we have a COVID crisis,  
10 obviously, and wide-body aircraft are not an item  
11 mark. This is the youngest of the Airbus wide-body  
12 aircraft in the family. The 350 has been flying  
13 since 2015. It is an aircraft that has good engine  
14 performance and it will be in demand for a very long  
15 period of time.

16 So the aircraft values, I've seen that  
17 over the last 20 years will come back. There will be  
18 demand and demand will drive value up again, because  
19 it will be capable of generating cash.

20 Q Just to get back to the issue of how the  
21 role of JPL in the industry impacts valuation, I  
22 think you mentioned that in -- as a lessor, you  
23 wouldn't go out and repossess an aircraft; is that  
24 correct?

25 A That's not correct. I said we would try

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to avoid. We would believe that, as long as we can work with an airline, we will try to lease the aircraft there.

I've been involved in repossessions. If it's hopeless, we'll try to get out. But it's a finite line to walk because you don't want to have the aircraft ending in a total bankruptcy, but you would not want to repossess early, and you certainly would want to be more lenient if you have a carrier like Vietnam, so -- the flag carrier of the country Vietnam.

Q You said you wouldn't want the aircraft ending in a total bankruptcy.

Do you see that?

A I said that, yeah.

Q What do you mean by that, a total bankruptcy?

A So I've been involved in a couple of bankruptcies with large airlines, namely King Fisher in Italy -- sorry -- in India and if -- and that was a company that, in the end, was private, had no whatsoever government support. It was maybe hopeful, but maybe not expected that government support would be coming through, and that bankruptcy would be most

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2 difficult for the source.

3 So -- I was involved and got all the  
4 aircraft back, but it was a long, protracted process.

5 Q Correct me if I'm wrong, but I think you  
6 mentioned in an earlier answer with respect to the  
7 lease assets that have been terminated, you wouldn't  
8 want to be involved in a litigation against VNA  
9 relating to lease asset; is that correct?

10 A We would try to --

11 MR. SHAUGHNESSY: Objection.

12 THE WITNESS: We would try to

13 avoid. I mean, if we have to we would,

14 but we would try to avoid because we view

15 Vietnam as an airline that is going to be

16 around tomorrow. It's a flag carrier of

17 the country of Vietnam. Vietnam is an

18 export nation, it's a tourist

19 destination, so they'll need a flag

20 carrier.

21 Vietnam is there. To litigate

22 against Vietnam will be not helping us.

23 BY MR. GRIFFIN:

24 Q When you say us, you're speaking about

25 JPL; is that correct?



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2 A Correct, or any other lessor.

3 Q There's nothing that prevents litigating  
4 with VNA over the claims, and there's a potential  
5 that you -- in a litigation you could recover  
6 significant damages or -- as a result of that  
7 litigation to offset some of the costs that you  
8 identified in a repossession; is that correct?

9 MR. SHAUGHNESSY: Objection.

10 THE WITNESS: Not that easy to  
11 answer. That could be but could not be,  
12 because you need to get your hands  
13 physically on the asset. I --

14 BY MR. GRIFFIN:

15 Q Are you --

16 A An example --

17 Q Strike that. Sorry.

18 Do you have any reason to believe that  
19 Vietnam -- VNA would have tried to retain the  
20 aircraft if you tried to repossess it?

21 MR. SHAUGHNESSY: Objection.

22 THE WITNESS: I can't answer that.

23 I don't think we ever got to that. I can  
24 just say that I had a case once in Russia  
25 where the aircraft was not leaving the

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2 country anymore and it was impossible to  
3 repossess.

4 BY MR. GRIFFIN:

5 Q But in this circumstance you don't know  
6 one way or the other whether VNA would have willingly  
7 returned the aircraft?

8 A We never had that discussion.

9 Q So you don't know --

10 A To my best knowledge.

11 Q And I think we spoke over each other  
12 there. So I just want to -- for the sake of the  
13 record.

14 You don't know one way or the other  
15 whether Vietnam would have been willing to return the  
16 aircraft, correct?

17 A I don't know that.

18 MR. GRIFFIN: I think we've been  
19 going for about a half hour. Do you want  
20 to take a quick break -- I mean, an hour,  
21 about an hour. Do you want to take a  
22 quick break?

23 THE WITNESS: Okay. Good idea.

24 MR. SHAUGHNESSY: Do you want to  
25 take five or ten minutes, Mr. Griffin?

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2 MR. GRIFFIN: Five is fine. Let's  
3 go off the record and then we'll --

4 THE VIDEOGRAPHER: The time is  
5 4:36 p.m. We're off the record.

6 (Brief pause.)

7 THE VIDEOGRAPHER: The time is  
8 4:44 p.m., we're on the record.

9 BY MR. GRIFFIN:

10 Q Mr. Loechteken, what is the current  
11 status of the VNA leases on the airplanes of the  
12 debtors?

13 MR. SHAUGHNESSY: Objection.

14 THE WITNESS: The leases were  
15 terminated by this order.

16 BY MR. GRIFFIN:

17 Q And I think you mentioned that there was  
18 another plane, the MSN 150. What's the status of  
19 that lease?

20 A The lease is not --

21 MR. SHAUGHNESSY: Objection.

22 THE WITNESS: The lease is not  
23 terminated.

24 BY MR. GRIFFIN:

25 Q Is JPL in discussions with VNA in

1 H. LOECHTEKEN

2 relation to the MSN 067 and MSN 173?

3 A Not anymore.

4 Q When did those end?

5 A We had discussions about a new lease

6 right until we were going into the Chapter 11

7 process, if I recall correctly. And at that point in

8 time we understood the lease was terminated anyway,

9 but we understood -- because Vietnam was in the

10 process of obtaining approval on an already

11 agreed-upon lease profile before the termination of

12 the lease, we understood we couldn't sign this

13 opportunity anymore.

14 Q And I apologize. You said in the process

15 of obtaining approval on an already agreed-upon lease

16 profile. What does that mean?

17 A So Vietnam has been going through an

18 exercise with all its lessors to restructure the

19 leases. They have done the same with us.

20 We had a lease profile by and large

21 agreed, if I recall correctly, but obviously given

22 the Chapter 11 situation and also given the

23 termination of the lease by FitzWalter, we could not

24 and did not approve any of this anymore.

25 Q You mentioned two things impacting moving

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2 forward with that lease, one was the bankruptcy, one  
3 was the situation with FitzWalter.

4 Between those two, which of them, in your  
5 opinion, caused the communications with VNA regarding  
6 the approval of a new lease to come to an end?

7 MR. SHAUGHNESSY: Objection.

8 THE WITNESS: I can't really say  
9 that. I think the lease was terminated  
10 and we were assuming at the point when  
11 FitzWalter purchased the asset that there  
12 would be value, even for FitzWalter, in a  
13 new lease. They never engaged with us on  
14 this. So when the Chapter 11 process  
15 happened, then obviously that was a  
16 different story.

17 BY MR. GRIFFIN:

18 Q Did you attempt to engage with FitzWalter  
19 on a lease -- a new lease with VNA?

20 MR. SHAUGHNESSY: Objection. Vague  
21 as to the term you.

22 BY MR. GRIFFIN:

23 Q Did you personally attempt to engage with  
24 FitzWalter regarding a new lease for either of the  
25 debtor aircraft?

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2 A No.

3 Q Do you know whether anybody at JPL or at  
4 the debtors attempted to engage with FitzWalter  
5 regarding a new lease with VNA on either of the  
6 debtor aircraft?

7 MR. SHAUGHNESSY: Objection.

8 THE WITNESS: I don't know that. I  
9 doubt it, but I don't know.

10 BY MR. GRIFFIN:

11 Q Who would know that?

12 MR. SHAUGHNESSY: Objection.

13 THE WITNESS: Well, I can't say I  
14 know that, because I've been in the -- I  
15 correct myself. We did not engage. The  
16 only other person that could have engaged  
17 was Teiji Ishikawa, and I was in very  
18 close communication with Teiji Ishikawa.  
19 I'm quite sure that he did not engage  
20 with FitzWalter. He would have told me.

21 BY MR. GRIFFIN:

22 Q So neither you or Mr. Ishikawa engaged  
23 with FitzWalter about a new VNA lease; is that  
24 correct?

25 MR. SHAUGHNESSY: Objection.

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THE WITNESS: That is correct. We were approached very unfriendly by FitzWalter. They terminated the lease the day after they acquired the assets. And they made an attempt to kind of establish contact, but that was just an attempt to establish a contact, nothing else.

There was no substantive discussion. There was no reasoning as to why there was no pass forward shown, therefore, we felt it was not helpful to engage in any discussions with them.

BY MR. GRIFFIN:

Q After FitzWalter reached out to you, you didn't think it would be helpful to move forward with additional discussions with them; is that correct?

A Well, I had one more additional --

MR. SHAUGHNESSY: Objection.

You can answer.

THE WITNESS: I had one more discussion with them, but it was already at a point where they were not only threatening litigation, they were

1 H. LOECHTEKEN

2 starting to litigate.

3 BY MR. GRIFFIN:

4 Q You mentioned two interactions with  
5 FitzWalter. When were those?

6 A If I remember correctly, four or five  
7 days after they terminated the lease is the first  
8 one, and the last one about two weeks ago.

9 Q Did you reach out to FitzWalter on either  
10 of those occasions?

11 A No.

12 Q When you say two weeks ago, that's  
13 sometime in early January; is that correct?

14 A I'd say January 10.

15 Q This was, again, FitzWalter reaching out  
16 to you; is that correct?

17 A That's correct.

18 Q Am I correct that in early December,  
19 let's say around December 5th or 6th, you had your  
20 first call with FitzWalter?

21 MR. SHAUGHNESSY: Objection.

22 THE WITNESS: I think so, I had my  
23 first call with FitzWalter.

24 BY MR. GRIFFIN:

25 Q Do you know whether that was the first



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2 call anybody in the JP Lease organization, including  
3 the debtors and any of the other associated entities,  
4 had with representatives of FitzWalter?

5 A I don't know that.

6 Q Who would know that?

7 MR. SHAUGHNESSY: Objection. Calls  
8 for speculation.

9 THE WITNESS: I don't know that.

10 BY MR. GRIFFIN:

11 Q Do you have any reason to believe that  
12 anybody else in the JP Lease organization had an  
13 interaction with FitzWalter prior to the call four or  
14 five days after they acquired the lease?

15 MR. SHAUGHNESSY: Objection.

16 THE WITNESS: Can you please repeat  
17 the question?

18 BY MR. GRIFFIN:

19 Q Do you have any reason to believe that  
20 anybody in the JP Lease organization had an  
21 interaction with FitzWalter prior to the call four or  
22 five days after they acquired the leases?

23 I'm sorry.

24 MR. SHAUGHNESSY: Objection.

25

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2 BY MR. GRIFFIN:

3 Q I misstated. I'm saying the leases.

4 Do you have any reason to believe that  
5 anybody in the JP Lease organization had an  
6 interaction with FitzWalter prior to the call four or  
7 five days after they acquired their interest in the  
8 debt of the JPA entities?

9 MR. SHAUGHNESSY: Objection.

10 THE WITNESS: It could be, but I --  
11 I frankly don't know because, as I said,  
12 the -- before we even knew or while we  
13 knew that the debt was acquired, the  
14 lease was immediately terminated. It  
15 could have been that somebody made  
16 clarification calls, but I don't know  
17 that.

18 BY MR. GRIFFIN:

19 Q Would the termination of the lease have  
20 prevented you from calling FitzWalter?

21 MR. SHAUGHNESSY: Objection.

22 THE WITNESS: It's an unfriendly  
23 move, obviously. It's not the right move  
24 to start the relationship. I'm not  
25 saying it prevented, but it clearly

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2 created obstacles.

3 BY MR. GRIFFIN:

4 Q Created obstacles between you and  
5 FitzWalter or created obstacles in some other way?

6 A Between us and FitzWalter.

7 Q What obstacles?

8 A If somebody acquires a piece of debt from  
9 a bank and without any consultation and without any  
10 discussions terminates the lease and disrupts what  
11 was ongoing in the restructuring that was very  
12 publicly being commented on in the press, then that  
13 creates an environment that is not friendly.

14 Q You continued to have discussions with  
15 VNA after that; isn't that correct?

16 MR. SHAUGHNESSY: Objection.

17 THE WITNESS: Yes. We had  
18 discussions with VNA. Third we have  
19 three aircraft there.

20 BY MR. GRIFFIN:

21 Q Did you continue to have discussions with  
22 VNA about the MSN 067 and MSN 173?

23 MR. SHAUGHNESSY: Objection.

24 THE WITNESS: Yes, I think so,  
25 simply because it's a three-package

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2 aircraft deal. It's three aircraft and

3 VNA entered discussion about three

4 aircraft.

5 BY MR. GRIFFIN:

6 Q When you say a three-package aircraft  
7 deal, are the leases somehow connected?

8 A No, the leases are not connected, but VNA  
9 views it as one relationship, as we do. It's one  
10 airline, three same aircraft with one airline.

11 Q As a result, despite the termination of  
12 the leases on the MSN 067, MSN 173, you continued to  
13 have discussions with VNA about those leases; is that  
14 correct?

15 MR. SHAUGHNESSY: Objection. Well,  
16 we continued the discussion that standard  
17 with regard to the lease profile. And we  
18 said we cannot agree to lease, but we can  
19 see on whether this is something that  
20 could be of interest to anyone, including  
21 FitzWalter.

22 It's our firm belief that the  
23 aircraft with lease attached has more  
24 value than the aircraft without a lease  
25 attached. So we wanted to preserve the

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value of the restructuring that was  
ongoing with Vietnam because we believed  
that Vietnam will pull through and,  
secondly, the aircraft will be worth much  
more with the lease than without the  
lease.

BY MR. GRIFFIN:

Q You didn't have discussions with  
FitzWalter to relay your ongoing discussions with  
VNA, in your view, that continuing that VNA  
relationship would be the best thing for the assets,  
did you?

MR. SHAUGHNESSY: Objection.

THE WITNESS: We viewed to have an  
asset that has a lease attached being the  
better opportunity for anyone than an  
asset without a lease attached.

We were very clear and conscious  
about the fact that the lease had been  
terminated and that the -- that  
FitzWalter controlled, through a security  
arrangement, the debt. So we knew that  
we couldn't sign the lease.

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2 BY MR. GRIFFIN:

3 Q That didn't stop you from talking with  
4 VNA about the lease, but it did -- strike that.

5 That didn't stop you from talking with  
6 VNA about the lease, but you did not talk with VN --  
7 with FitzWalter about those discussions with VNA,  
8 right?

9 MR. SHAUGHNESSY: Objection.

10 THE WITNESS: That is correct. We  
11 kept talking or Vietnam kept talking to  
12 us about this, but it was almost done  
13 anyway and they were in the process of  
14 doing their corporate approvals. And we  
15 did not discuss this in detail with  
16 FitzWalter, that is correct.

17 BY MR. GRIFFIN:

18 Q The discussions with VNA ended around the  
19 time of the filing of the bankruptcy; is that  
20 correct?

21 MR. SHAUGHNESSY: Objection.

22 THE WITNESS: I think the  
23 discussion about the lease ended at  
24 around the filing of the bankruptcy, yes.

25

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2 BY MR. GRIFFIN:

3 Q Was there a reason those discussions with  
4 VNA ended around the time of the filing of the  
5 bankruptcy?

6 MR. SHAUGHNESSY: Objection.

7 THE WITNESS: I don't think it was  
8 really related to the bankruptcy. I  
9 think it was much more related to the  
10 fact that the discussion had reached its  
11 conclusion anyway.

12 BY MR. GRIFFIN:

13 Q What do you mean by that?

14 A It was essentially agreed with Vietnam.  
15 We had a lease profile that was agreed.

16 Q Did you enter into the new lease profile  
17 on the other aircraft you had with Vietnam?

18 MR. SHAUGHNESSY: Objection.

19 BY MR. GRIFFIN:

20 Q Why not?

21 THE REPORTER: I'm sorry. I didn't  
22 hear an answer.

23 (Prior question read back into the  
24 record.)

25 MR. GRIFFIN: I'll ask it again so

1 H. LOECHTEKEN

2 we can have a clear record.

3 BY MR. GRIFFIN:

4 Q Did you enter into the new lease profile  
5 on the other aircraft you had with Vietnam?

6 MR. SHAUGHNESSY: Objection.

7 THE WITNESS: No.

8 BY MR. GRIFFIN:

9 Q Why not?

10 A The debt was acquired or was in the  
11 process of being acquired by another investor and it  
12 would not have been possible for us to change the  
13 lease.

14 Q For the record, so the debt on the MSN  
15 067 and MSN 173 was acquired by FitzWalter; is that  
16 correct?

17 MR. SHAUGHNESSY: Objection.

18 THE WITNESS: Part of it.

19 BY MR. GRIFFIN:

20 Q And then you have another plane, and the  
21 debt was acquired by a separate entity; is that  
22 correct?

23 MR. SHAUGHNESSY: Objection.

24 THE WITNESS: On the -- yes, that's  
25 correct. If it was --



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2 BY MR. GRIFFIN:

3 Q What entity acquired that debt?

4 A But FitzWalter only acquired part of the  
5 debt. FitzWalter acquired just a slim majority in  
6 one aircraft as a senior portion, and I think, if I  
7 recall correctly, about 70 percent value or  
8 70 percent in the other aircraft, and there was also  
9 junior debt outstanding.

10 Q Thank you for that.

11 With respect to the other aircraft, the  
12 MSN 150 I believe, who acquired that debt?

13 MR. SHAUGHNESSY: Objection.

14 THE WITNESS: SVPGlobal.

15 BY MR. GRIFFIN:

16 Q Did that acquisition prevent you from  
17 entering this agreed-upon lease with VNA?

18 MR. SHAUGHNESSY: Objection.

19 THE WITNESS: Yes. Yes.

20 BY MR. GRIFFIN:

21 Q Is the lease on the MSN 150 still in  
22 place?

23 MR. SHAUGHNESSY: Objection.

24 THE WITNESS: Yes.

25

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2 BY MR. GRIFFIN:

3 Q We can finally get to these declarations.  
4 I'm going to put in your other declaration because I  
5 think that's where more of your background is. So  
6 give me a moment.

7 (Loechteken Exhibit No. 2 was  
8 marked for the record.)

9 BY MR. GRIFFIN:

10 Q Do you see an -- what's been marked as  
11 Exhibit No. 2 in your folder, the Loechteken  
12 Declaration, Docket No. 44?

13 A I see that.

14 Q Do you recognize this document?

15 A Well, it's -- yes, I do.

16 Q Did you prepare this document?

17 A Yes, I do -- I did. I did this with the  
18 help of my attorneys. I gathered the facts. I  
19 handed over the facts and consulted with my  
20 attorneys. They did the actual write-up, but I  
21 reviewed.

22 Q Is the information in this declaration  
23 accurate to the best of your knowledge?

24 A It's accurate to the best of my  
25 knowledge.

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2 Q Is there anything about this declaration  
3 that, sitting here today, you would want to modify?

4 A I don't think so.

5 Q If you turn to Section 2 of this  
6 declaration, it's on page five. Please let me know  
7 when you get there.

8 A One moment, please, sir. Yes, I have it.

9 Q And before I ask you any questions there,  
10 you note in here that you're the CEO of JLPS Ireland,  
11 Limited; is that correct?

12 A That is correct.

13 Q You're not an officer, employee or  
14 authorized representative of the debtors, are you?

15 MR. SHAUGHNESSY: Objection.

16 THE WITNESS: No, but I'm involved  
17 with the debtor on a day-to-day basis.

18 As I said earlier, we have continuous  
19 calls to Tokyo frequently on a weekly  
20 basis, and given than Vietnam has been --  
21 the airline was -- lease went into  
22 arrears, I had numerous calls with Teiji  
23 Ishikawa about this.

24 BY MR. GRIFFIN:

25 Q But to answer my question, you're not an

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2 authorized, employee or authorized representative of  
3 the debtors; is that correct?

4 MR. SHAUGHNESSY: Objection.

5 THE WITNESS: That's correct.

6 BY MR. GRIFFIN:

7 Q You were not directly involved in the  
8 purchase of either the MSN 173 or MSN 067; is that  
9 correct?

10 A Correct. Predates me joining JP Lease.

11 Q When did you join JP Lease?

12 A On the first of January 2019. Well, I  
13 should say I've been involved for the better part of  
14 six months beforehand as a consultant.

15 Q In your role as a consultant, you were  
16 not involved in the purchase of either of the  
17 aircraft at issue here; is that correct?

18 A That is correct.

19 Q Who handled those transactions?

20 A The aircraft was purchased with the help  
21 of two arrangers, one is Austrados and one is Clover.

22 Q Who within the JP Lease organization was  
23 responsible for the purchase of the MSN 067 and MSN  
24 173?

25 MR. SHAUGHNESSY: Objection.

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2 THE WITNESS: I can't tell. There  
3 was one employee that in the interim has  
4 left who was leading the acquisition  
5 team.

6 BY MR. GRIFFIN:

7 Q Do you know if Mr. Ishikawa would have  
8 had any role in these acquisitions?

9 A He would have been involved from an  
10 approval perspective, that's for sure.

11 Q Are you testifying here in -- with  
12 respect to the declaration on January 10th as an  
13 expert or a fact witness?

14 MR. SHAUGHNESSY: Objection.

15 THE WITNESS: I don't know the  
16 difference. That's a legal question. I  
17 can't answer.

18 BY MR. GRIFFIN:

19 Q Are you testifying from your personal  
20 knowledge?

21 A From my personal knowledge, yes, correct.

22 Q So you're not offering opinions; is that  
23 correct?

24 MR. SHAUGHNESSY: Objection.

25 THE WITNESS: I don't understand

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2 what opinion in this context means.

3 BY MR. GRIFFIN:

4 Q If you turn to page five of the  
5 declaration, the Sales and Marketing Efforts,  
6 Paragraph 11 says: The debtors are pursuing in an  
7 orderly marketing and auction process for the sale of  
8 the debtors' hundred percent ownership in the  
9 purchased assets.

10 Do you see that?

11 A I see that, yeah.

12 Q What are the purchased assets?

13 A These are the two aircraft, MSN 67 and  
14 MSN 173.

15 Q Anything else?

16 A Plus the lease/lease claims that would be  
17 associated.

18 Q Anything else?

19 A Is there anything else? I don't think  
20 so.

21 Q I don't know. I'm just asking you. This  
22 is discovery, so we're trying to determine what  
23 you're identifying here when you're discussing the  
24 interests.

25 A So it's lease -- lease, lease claims and

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2 the assets, and everything that's associated with the  
3 assets, obviously engines, APUs, records, everything  
4 that goes with it.

5 Q And when you say lease claims, what does  
6 that mean?

7 A That means that there has been a lease  
8 that has been defaulted, obviously, and if it  
9 defaulted -- if there was a defaulted lease, there  
10 could be claims. So anything that has to do with  
11 those leases that a potential buyer could value.

12 Q To clarify, you're not selling an active  
13 lease, you're selling a terminated lease and whatever  
14 claims are associated with a terminated lease; is  
15 that correct?

16 MR. SHAUGHNESSY: Objection.

17 THE WITNESS: That is correct, but  
18 what we can also offer to buyers is a  
19 lease profile of what Vietnam would agree  
20 to, and then it's up to the buyers to  
21 consider on whether this is something  
22 that they can value.

23 BY MR. GRIFFIN:

24 Q To clarify, so it's the aircraft, the  
25 lease claims, and within the claims there's a lease

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2 profile?

3 A No. The claims are related to the  
4 terminated lease, but there is obviously a discussion  
5 a commercial discussion that had run its course where  
6 Vietnam has agreed to a cash flow profile and certain  
7 return conditions for the aircraft in the future, and  
8 that is something that a potential buyer can value.

9 Q And the lease profile, is that something  
10 that you have in writing from VNA and can accept?

11 MR. SHAUGHNESSY: Objection.

12 THE WITNESS: Yes, I think we'll  
13 have enough communication on that. It is  
14 in writing, to my best knowledge. I need  
15 to clarify this with Tokyo, as to what  
16 exactly is the status now.

17 BY MR. GRIFFIN:

18 Q For clarification, is there a written  
19 document that's been signed by VNA offering a new  
20 cash flow profile on the -- on the terminated leases?

21 MR. SHAUGHNESSY: Objection.

22 THE WITNESS: I don't think so, but  
23 I don't know precisely. I don't think it  
24 is there. You mean signed, really signed  
25 by them as this is corporate approved



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2 from Vietnam?

3 BY MR. GRIFFIN:

4 Q Correct.

5 A They were -- I would need to discuss this  
6 directly with Tokyo, what was the relationship. They  
7 were in the process of approving, but I don't this  
8 so, because obviously we told them we can't approve.  
9 I don't understand. I don't know exactly where that  
10 process is within Vietnam.

11 Q Thank you for that. I'm just trying to  
12 get to the bottom of what you're marketing and  
13 auctioning in the -- in the purchased assets.

14 So we have the aircraft and the  
15 associated documentation and engines and things like  
16 that, and we have lease claims on the terminated  
17 lease. Is there anything beyond that that you're  
18 actually offering for sale?

19 MR. SHAUGHNESSY: Objection. The  
20 term sheet speaks for itself.

21 BY MR. GRIFFIN:

22 Q You can answer.

23 A We'll offer them what's in the term  
24 sheet.

25 Q Have you had any discussions with any

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2 potential buyers of what goes into the purchased  
3 assets?

4 A We obviously had discussions with the  
5 stalking horse bidder. We did not have detailed  
6 discussions yet with any other potential buyer.

7 Q When you say the stalking horse bidder,  
8 you're referring to Strategic Value Partners?

9 A Correct.

10 Q And you haven't had any detailed  
11 discussions with anyone beyond SVP?

12 A No, not detailed enough to exactly spell  
13 out these are the assets, including potential claims  
14 and including a potential new lease profile.

15 Q In the discussions with SVP, did you make  
16 any representations about what would be included in  
17 the purchased assets?

18 MR. SHAUGHNESSY: Objection.

19 THE WITNESS: I think the SVP term  
20 sheet spells it out.

21 BY MR. GRIFFIN:

22 Q I understand that there are words in the  
23 SVP term sheet. Were there any other -- any other  
24 discussions between you and SVP about those terms?

25 A No, not to my knowledge. Not in my role.

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2 Q You didn't have any calls with anyone  
3 from SVP about the term sheet?

4 A I did.

5 MR. SHAUGHNESSY: Objection.

6 BY MR. GRIFFIN:

7 Q How many calls did you have with SVP  
8 about the term sheet?

9 A I would say maybe -- maybe one or two.  
10 Difficult to distinguish because we have always --  
11 also the MSN 150 situation.

12 But the term sheet negotiations, by and  
13 large, were handled by our counsel with input from  
14 our side, but the face-to-face or the direct  
15 negotiations was handled by our counsel.

16 Q When you say our counsel, who are you  
17 referring to?

18 A Vedder Price.

19 Q That's counsel to JPL, correct?

20 A Correct.

21 Q Not counsel for the debtors?

22 A Correct.

23 Q You mentioned that it's hard to  
24 distinguish the discussions about the purchased  
25 assets described in your declaration with those of

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2 the -- relating to the one -- MSN 150 situation.

3 Were the discussions about those two

4 transactions part of a single discussion?

5 MR. SHAUGHNESSY: Objection.

6 THE WITNESS: I think initially,

7 yes.

8 BY MR. GRIFFIN:

9 Q And what do you mean by that?

10 A That SVP made a proposal for all three  
11 aircraft.

12 Q When SVP made that proposal, did SVP  
13 already own the debt in one of the aircraft?

14 A At least parts of the debt.

15 Q At some point did the discussions shift  
16 to only include the 067 and 173?

17 MR. SHAUGHNESSY: Objection.

18 THE WITNESS: Yes. According to my  
19 recollection, it shifted, because we  
20 wanted to do separate leases.

21 BY MR. GRIFFIN:

22 Q When you say we, you're referring to JPL?

23 A JPL, because it was our counsel.

24 Q And again, our counsel -- I'm sorry to be  
25 pedantic but there's a lot of different players here.

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And there's the counsel sitting at the table  
defending this deposition and there's the counsel on  
the phone.

So I just want to make sure, when you say  
our counsel, again, you're referring to the counsel  
from Vedder; is that correct?

A No, I think --

MR. SHAUGHNESSY: Objection.

THE WITNESS: I think this was also  
a matter of involvement from Togut,  
because we have two assets that are owned  
by -- I'm sorry -- the two assets under  
the Chapter 11 process where FitzWalter  
acquired that, and then we have another  
asset that is not in a Chapter 11 process  
and we would not want to put into a  
Chapter 11 process because it is a  
totally different discussion.

That is being -- essentially, that  
debt has been acquired by SVPGlobal, so  
we wanted to keep this separate.

BY MR. GRIFFIN:

Q The one or two calls you had with SVP,  
when were those?

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2 A They were before -- one was before -- one  
3 was in the week of -- starting December 10th, if I  
4 remember correctly, and the other one was around  
5 Christmastime. The second one was very short.

6 Q With respect to the first call, what was  
7 that -- the December 10th -- strike that.

8 The first call was in the week of  
9 December 10th. Can you tell me who participated in  
10 that call?

11 A I don't remember whether -- anymore who  
12 participated on their side, and I cannot -- no, I  
13 don't remember.

14 I think it was one gentleman called Greg  
15 Braylovskiy, but I don't -- yeah, he participated,  
16 but I don't know who else.

17 Q What was the substance of that call?

18 A The call was about SVP having made a  
19 proposal to us, in -- in effectively buying the  
20 aircraft from us, with some recovery for our  
21 investors.

22 Q This is before the filing of the  
23 bankruptcy, correct?

24 A Correct.

25 Q Did that proposal relate to the plane

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2 that they had an interest in, the 150, or did it  
3 relate to something else?

4 A It related to all three planes.

5 Q You mentioned that there would be some  
6 recovery for our investors. What do you mean by  
7 that?

8 A There was a proposal where they would pay  
9 upfront something to the equity, plus a participation  
10 in proceeds, if and when a certain hurdle rate would  
11 have been surpassed.

12 Q Was the proposal to pay off all the debt  
13 holders and then pay off equity?

14 A Correct. It was a hundred percent payoff  
15 to the debt holders and then equity. And this is  
16 something that is of extreme importance to us. We  
17 don't want to be seen in the market of inviting debt  
18 holders and banks into structures where money has  
19 been lost, especially if it's unnecessary.

20 Q What do you mean by that?

21 A So SVPGlobal made a proposal that would  
22 have paid all debt, which is better than what we see  
23 a proposal that was offered by FitzWalter or the  
24 process we saw from FitzWalter. So, for us, it is  
25 important to not only be seen, but to actively work

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2 with other creditors to secure that a hundred percent  
3 of the debt in a structure that we have implemented,  
4 invite the banks into finance and managing ongoingly  
5 for all creditors, as well as investors. We don't  
6 want to see unnecessary losses created.

7 Q You mentioned a process -- or strike  
8 that.

9 You mentioned the proposal that was  
10 offered by FitzWalter.

11 What are you referring to there?

12 A If I recall correctly, it was a term  
13 sheet, a draft term sheet proposal.

14 Q And you received a draft term sheet from  
15 FitzWalter?

16 A I think so. I'm not sure whether they  
17 called it a term sheet, but it was -- it had some  
18 terms.

19 Q When did you receive the term sheet?

20 A I don't recall precisely. I think it was  
21 in the week before December 17th.

22 Q What were the terms, if you remember?

23 A It was pay out all the debt, give a  
24 recovery of two and a half million per aircraft, and  
25 then have a 20 percent participation in the residual



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2 proceeds.

3 Q I think we're crossing signals here.

4 Was that a proposal from FitzWalter or  
5 the proposal from SVP?

6 A No, that was an SVP proposal. FitzWalter  
7 never made a proposal, to my best knowledge.

8 Q So I think we need to back up then a  
9 couple of questions there.

10 I asked you -- you mentioned a proposal  
11 from FitzWalter or a process from FitzWalter that you  
12 thought was less advantageous than what you were  
13 getting from SVP; is that correct?

14 A Certainly.

15 Q Okay. What is the proposal or process  
16 relating to FitzWalter that you're referencing?

17 A There was no process. I mean, FitzWalter  
18 terminated the leases, made what I call, on the face  
19 of it, attempt to establish contact, never followed  
20 up with any substantive proposal or anything.

21 It -- the next conversation happened when  
22 we were already deep in Chapter 11, and then there  
23 was a proposal made to me, which I am not sure  
24 whether I could value at all that they wanted to  
25 match the stalking horse bidder, and in exchange,

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2 waive litigation.

3 Q Thank you for that.

4 There was just some confusion because I  
5 think you mentioned that there was a proposal by  
6 FitzWalter.

7 A No, I'm sorry, then I misspoke if I said  
8 FitzWalter. It was SVP.

9 Q You mentioned earlier that FitzWalter was  
10 the security agent; is that correct?

11 A CACIB was the security agent, but  
12 FitzWalter stepped into that position.

13 Q As of early December, correct?

14 A As of December 1.

15 Q As a security agent, they had the rights  
16 and obligations to sell the collateral; is that  
17 correct?

18 MR. SHAUGHNESSY: Objection. Calls  
19 for a legal conclusion.

20 THE WITNESS: I don't want to  
21 speculate on that, but I know that it's  
22 not the norm in the industry that this  
23 goes in such a rushed and rapid process.

24 BY MR. GRIFFIN:

25 Q My question was, as the security agent,

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they had the ability to sell the underlying collateral because of the -- the associated defaults; is that correct?

MR. SHAUGHNESSY: Objection.

THE WITNESS: That is correct, but

I can't comment on timelines. I think the timeline was super aggressive and outside the norms and potentially outside of the legal framework.

BY MR. GRIFFIN:

Q What are you referring to when you say the timelines?

A The start of the auction of the claims. So within the first day of acquiring, termination of the lease, and then essentially a few days later the auctioning of the claims.

Q Is the -- or strike that. Are you suggesting the timeline between when they acquired the claims and when they started the auction impacts the -- whether the auction was appropriate?

MR. EDELMAN: Objection. That calls for -- a lot of your questions call for a legal conclusion, and this witness

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2 is not a lawyer. So could you refrain  
3 from asking -- I think the last five  
4 questions were all legal conclusions, so  
5 I object.

6 MR. SHAUGHNESSY: Same objection.

7 BY MR. GRIFFIN:

8 Q You can answer the question.

9 A Can you ask the question again? Sorry, I  
10 was distracted.

11 Q Are you suggesting that the timeline  
12 between when FitzWalter acquired the claims and when  
13 they started the auction impacts whether the auction  
14 was appropriate?

15 MR. SHAUGHNESSY: Objection.

16 THE WITNESS: Commercially, yes;  
17 legally, I can't answer.

18 BY MR. GRIFFIN:

19 Q So you have no opinion about whether what  
20 FitzWalter did with respect to the auction was legal  
21 under the contracts?

22 MR. SHAUGHNESSY: Objection.

23 THE WITNESS: I don't want to  
24 speculate.

25

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2 BY MR. GRIFFIN:

3 Q So you have no opinion about whether  
4 what -- strike that.

5 You have no opinion about what FitzWalter  
6 did with respect to the auctions was legal under the  
7 contracts?

8 MR. SHAUGHNESSY: Objection.

9 THE WITNESS: I don't want to  
10 speculate on legal matters.

11 BY MR. GRIFFIN:

12 Q Whether you want to speculate or not, are  
13 you going to be offering testimony about whether what  
14 FitzWalter did with respect to the auction was legal  
15 under the contracts?

16 MR. SHAUGHNESSY: Objection.

17 THE WITNESS: Frankly speaking, I  
18 can't answer that. Therefore, I would  
19 need to know the contracts in a lot of  
20 detail.

21 BY MR. GRIFFIN:

22 Q Because you don't know the contracts and  
23 you're not offering an opinion on the law, you are  
24 not going to be able to offer any testimony in this  
25 proceeding about whether what FitzWalter did with

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2 respect to the auctions was legal under the  
3 contracts; is that correct?

4 MR. SHAUGHNESSY: Objection.

5 Mischaracterizes testimony, calls for a  
6 legal conclusion.

7 THE WITNESS: I can't -- I can't  
8 really answer that question.

9 BY MR. GRIFFIN:

10 Q You can't answer whether you're going to  
11 give testimony or not?

12 MR. SHAUGHNESSY: Objection. His  
13 declarations speak for themselves, his  
14 testimony for the hearing is already in  
15 the record.

16 BY MR. GRIFFIN:

17 Q You've made reference to their auction  
18 procedures throughout multiple of your declarations  
19 and here today.

20 My question is, are you going to testify  
21 about whether what FitzWalter did with respect to the  
22 auctions of the lease assets was legal under the  
23 terms of the contract?

24 MR. SHAUGHNESSY: Objection. Let  
25 me note for the record that the portions

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of the declarations that are being  
submitted for next Wednesday's hearing do  
not address this topic. This is outside  
the scope, as my standing objection noted  
earlier.

Mr. Loechteken, you can answer.

I'm not instructing you not to answer.

THE WITNESS: Can you point me to  
the part of the term sheets that you're  
referring to, please? Sorry, part of my  
declaration. My apologies.

BY MR. GRIFFIN:

Q Can you answer my question?

Are you going to be offering any  
testimony about whether FitzWalter's actions  
regarding the sale of the lease assets was  
inconsistent with their rights under the contracts?

MR. SHAUGHNESSY: Same objection.

THE WITNESS: I can't judge the  
situation, so I can't offer testimony.

BY MR. GRIFFIN:

Q Is that a no?

A That was a no.

Q Turning back to your declaration, to

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2 Docket No. 44, which is Exhibit 2, under Paragraph  
3 12, with respect to the sales and marketing efforts,  
4 you talk about you will contact a broad range of both  
5 strategic and financial investors.

6 MR. EDELMAN: Can we hold on for  
7 one second? I think Brian lost his  
8 connection and he's trying to --

9 MR. GRIFFIN: Yeah, let's go off  
10 the record. I'm sorry. I was looking  
11 down, I didn't see Brian disappear.  
12 Let's go off the record.

13 THE VIDEOGRAPHER: The time is  
14 5:34 p.m. We're off the record.

15 (Brief pause.)

16 THE VIDEOGRAPHER: The time is  
17 5:47 p.m., we're on the record.

18 BY MR. GRIFFIN:

19 Q Mr. Loechteken, with respect to each of  
20 these JPAs, they were created to acquire these  
21 aircraft; is that correct?

22 MR. SHAUGHNESSY: Objection.

23 THE WITNESS: That is correct,  
24 yeah.

25



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2 BY MR. GRIFFIN:

3 Q And the aircraft is their only asset,  
4 correct?

5 MR. SHAUGHNESSY: Objection.

6 THE WITNESS: Correct.

7 BY MR. GRIFFIN:

8 Q They're not -- neither of the debtors  
9 here was formed under U.S. law?

10 MR. SHAUGHNESSY: Objection.

11 THE WITNESS: Correct.

12 BY MR. GRIFFIN:

13 Q They're Japanese entities?

14 MR. SHAUGHNESSY: Objection.

15 THE WITNESS: Correct.

16 BY MR. GRIFFIN:

17 Q Do you know what a single-purpose vehicle  
18 is?

19 A Yes.

20 Q That's what each of the debtors is,  
21 correct?

22 A Yes.

23 Q And they cannot engage in any business  
24 other than owning these aircraft, correct?

25 MR. SHAUGHNESSY: Objection.

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2 THE WITNESS: They're designed to  
3 own one aircraft each.

4 BY MR. GRIFFIN:

5 Q Thank you for clarifying.

6 So the JPA No. 111 debtor is created to  
7 own the MSN 067, correct?

8 A That is correct.

9 Q And it can't engage in any business other  
10 than that?

11 MR. SHAUGHNESSY: Objection. Calls  
12 for a legal conclusion.

13 THE WITNESS: I don't know the  
14 charter in detail of those JPA entities,  
15 so I don't know what is in either the  
16 charter allowed and/or what is allowed  
17 under Japanese law.

18 BY MR. GRIFFIN:

19 Q In your experience in this industry, you  
20 understand that, in these transactions, entities in  
21 the form of the debtors are created to basically own  
22 the aircraft and don't do anything else, right?

23 MR. SHAUGHNESSY: Objection.

24 THE WITNESS: That is correct.

25

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2 BY MR. GRIFFIN:

3 Q In fact, they don't even conduct any of  
4 their own operations, right?

5 MR. SHAUGHNESSY: Objection.

6 THE WITNESS: Mostly not.

7 BY MR. GRIFFIN:

8 Q They don't have any employees?

9 MR. SHAUGHNESSY: Objection.

10 THE WITNESS: They have directors.

11 BY MR. GRIFFIN:

12 Q But they don't have employees, correct?

13 A They don't have employees.

14 MR. SHAUGHNESSY: Objection.

15 BY MR. GRIFFIN:

16 Q And I think you're testifying here as the  
17 representative of an affiliated entity, correct?

18 MR. SHAUGHNESSY: Objection.

19 THE WITNESS: I have been involved  
20 with my team in Ireland in the day-to-day  
21 operations of the entities because, as I  
22 said earlier, we have discussed the  
23 Vietnam situation very frequently. We  
24 have weekly calls where Vietnam, as an  
25 airline carrier is discussed, and I had

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2 numerous discussions with Teiji Ishikawa  
3 about that.

4 BY MR. GRIFFIN:

5 Q I understand that, but my simple question  
6 was, the debtors don't conduct their own operations.  
7 They conduct operations by engaging with entities  
8 such as your entity that you're the CEO of, right?

9 MR. SHAUGHNESSY: Objection.

10 THE WITNESS: Correct. Sorry.

11 That is correct.

12 BY MR. GRIFFIN:

13 Q They're managed by JPL, essentially, and  
14 then JPL will engage other of its subsidiaries to do  
15 the specific tasks?

16 MR. SHAUGHNESSY: Objection.

17 THE WITNESS: That is correct.

18 BY MR. GRIFFIN:

19 Q Those entities then bill JPL, and then  
20 JPL will bill the debtor; is that correct?

21 MR. SHAUGHNESSY: Objection.

22 THE WITNESS: That is correct.

23 BY MR. GRIFFIN:

24 Q Is that the basis of the unsecured claims  
25 that JPL is submitting here?

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2 MR. SHAUGHNESSY: Objection.

3 THE WITNESS: That is a legal  
4 question that, again, I'm not qualified  
5 to answer.

6 BY MR. GRIFFIN:

7 Q So you don't know one way or the other  
8 what the basis of the claims that JPL is submitting  
9 in this case?

10 MR. SHAUGHNESSY: Objection.

11 THE WITNESS: It's a legal claim in  
12 bankruptcy that I have no knowledge  
13 about. I can't judge that.

14 BY MR. GRIFFIN:

15 Q Again, it's not a trick question. I'm  
16 just trying to verify that you're not going to be  
17 testifying about the claims that JPL has made in this  
18 bankruptcy.

19 MR. SHAUGHNESSY: Objection.

20 THE WITNESS: No, I'm not  
21 testifying about that.

22 BY MR. GRIFFIN:

23 Q The debtors don't have any offices in the  
24 United States, correct?

25 A That is correct.

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2 Q In fact, they have no offices anywhere in  
3 the world, right?

4 MR. SHAUGHNESSY: Objection.

5 THE WITNESS: That is correct.

6 BY MR. GRIFFIN:

7 Q Do you know whether either aircrafts  
8 owned by either of the -- strike that.

9 Do you know whether the aircraft owned by  
10 JPA No. 111 has ever touched down in the United  
11 States?

12 A I don't know.

13 Q What about the other aircraft, the one  
14 owned by JPA, No. 49?

15 A I don't know the flight schedules, the  
16 past flight schedules of those aircraft. I don't  
17 know.

18 Q Who would know that answer to those  
19 questions?

20 A Vietnam.

21 Q Who at the debtors would know the answer  
22 to those questions?

23 MR. SHAUGHNESSY: Objection. Asked  
24 and answered.

25 THE WITNESS: I honestly don't

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think that there would, because the aircraft would not acquire the FRAT from the manufacturer, that the debtor would know and what the past flight schedules were. It is not a matter that particularly has been diligenced.

BY MR. GRIFFIN:

Q With respect to the time frame during which the aircrafts were owned by the debtors, would anyone at the debtor know whether those aircraft have touched down in the United States?

MR. SHAUGHNESSY: Objection.

THE WITNESS: I can't answer.

BY MR. GRIFFIN:

Q So there will be nobody providing any testimony on behalf of the debtors regarding whether the aircraft have ever touched down in the U.S.; is that correct?

MR. SHAUGHNESSY: Objection. He doesn't -- he's not the debtor's counsel.

BY MR. GRIFFIN:

Q Let me ask a different question.

You won't be providing any testimony that the aircrafts have ever touched down in the United

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2 States; is that correct?

3 A That is correct.

4 Q Are you aware that all of the creditors

5 associated with the respective debtor are parties to

6 a proceeds agreement?

7 MR. SHAUGHNESSY: Objection.

8 THE WITNESS: Yes, I think so.

9 BY MR. GRIFFIN:

10 Q Is it your understanding that every  
11 secured creditor is a party -- strike that.

12 Is it your understanding that every  
13 secured creditor of each of the debtors is a party to  
14 that agreement?

15 MR. SHAUGHNESSY: Objection.

16 THE WITNESS: I am not a hundred  
17 percent certain. I assume so, but I'm  
18 not a hundred percent certain.

19 BY MR. GRIFFIN:

20 Q Is it correct that JPL filed these --  
21 strike that.

22 Is it correct that JPL had the debtors

23 file these cases to stop FitzWalter from selling the

24 lease assets?

25 A Yes, that is correct. We saw this as an



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2 attempt to diminish the value.

3 Q Were you personally involved in that  
4 decision?

5 A Yes.

6 Q Who else was involved in that decision?

7 A Several people on my team, Teiji Ishikawa  
8 in Tokyo and several people on his team in Tokyo.

9 Also, our counsel, and we have been filing based on  
10 the recommendation -- based on the legal analysis.

11 Q Yeah, I'm not -- I don't want you to get  
12 into discussions with counsel. I'm not trying to get  
13 into that.

14 MR. SHAUGHNESSY: Thank you,  
15 Mr. Griffin.

16 MR. GRIFFIN: I just want to  
17 understand --

18 MR. SHAUGHNESSY: I'll offer the  
19 same instruction.

20 BY MR. GRIFFIN:

21 Q I want to understand, at the outset, who  
22 was involved.

23 So we have you were involved and people  
24 on your team, and would that be the team within  
25 JLPSI?

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2 A Correct.

3 Q And then there's Mr. Ishikawa; is that  
4 correct?

5 A That's correct, and members in his team.

6 Q And when you say members in his team, is  
7 that a team at JPL?

8 A That's the team in Tokyo, yes, in JPL.

9 Q Who on your team was involved in this  
10 process?

11 A Our head of legal.

12 Q Who is that?

13 A The name is Shane Carroll.

14 Q Who else?

15 A And our chief operating officer. The  
16 name is Mike Butler.

17 Q Anybody else?

18 A No.

19 Q Mr. Ishikawa was directly involved in  
20 this decision to file bankruptcy, as well?

21 A Correct.

22 Q Who else from his team was involved?

23 A I don't remember. I don't recall  
24 precisely. There was a group of people that was  
25 there that included our lawyer and several others,

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2 but I don't remember.

3 I think the final decision, obviously, in  
4 this is between -- it was a collective decision, but  
5 it's between myself and Mr. Ishikawa.

6 Q You and Mr. Ishikawa were the final  
7 decision makers about whether to institute a  
8 bankruptcy in this case?

9 A Yeah.

10 Q When you say Mr. Ishikawa's lawyer, would  
11 that have been an in-house lawyer or external  
12 counsel?

13 A That would have been an in-house lawyer.

14 Q You don't remember the name of that  
15 individual?

16 A I remember it's Buda-san, Mr. Buda.

17 Q In Paragraph 4 of your supplemental  
18 declaration, Doc 78, which is Exhibit 1, you mention  
19 that there were extensive internal discussions --

20 MR. SHAUGHNESSY: Hold on. Let's  
21 make sure the witness is looking at the  
22 document, please.

23 MR. GRIFFIN: Yeah, I'm fine.

24 Okay.

25 MR. SHAUGHNESSY: Thank you.

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2 THE WITNESS: Okay.

3 BY MR. GRIFFIN:

4 Q Do you see Paragraph 4 on page two of  
5 Exhibit No. 1, you reference that there are extensive  
6 internal discussion.

7 Do you see that?

8 A Correct.

9 Q When you're referencing debtors' counsel  
10 there, are you referencing the Togut firm or another  
11 firm? And I don't want your communications. I just  
12 want you to identify which firm.

13 A So we spoke with the Togut firm, but we  
14 also spoke with our counsel.

15 Q When you say our counsel, you're talking  
16 about JPL's counsel, correct?

17 A In-house as well as, yeah, the Vedder  
18 firm, Vedder Price.

19 Q You mentioned other debtor  
20 representatives. Is that a reference to the people  
21 that we just -- we just identified?

22 A That's a reference to the people, yeah,  
23 we identified, correct.

24 Q Were there any discussions regarding  
25 instituting the bankruptcy had outside the presence

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2 of counsel?

3 A I remember one or two longer phone calls  
4 with Teiji Ishikawa about this, but the vast majority  
5 of the discussions were with counsel.

6 Q When was the first discussion you had  
7 with Mr. Ishikawa with -- outside the presence of  
8 counsel, about the issue of whether to file a  
9 bankruptcy?

10 A I don't remember precisely, but I think  
11 we started that discussion around Wednesday that  
12 week, when we filed on Friday. It could have been  
13 Tuesday.

14 Q You filed on the 17th of December.

15 A Correct.

16 Q So the conversation would have occurred  
17 either the 15th or the 14th of December; is that  
18 correct?

19 A That is correct. I think on the 14th --  
20 on the 14th we found out about the FitzWalter sale,  
21 and only after that happened did we even seriously  
22 consider.

23 We had engaged with counsel before, but  
24 we were not considering filing for bankruptcy, but  
25 when we saw the process that was started, then we

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2 started to have the discussion about -- first with  
3 counsel and then internally, about whether or not we  
4 should.

5 Q And just to clarify, I'm not trying to  
6 get into discussions with counsel.

7 But your testimony is that the thing that  
8 triggered JPL's consideration of bankruptcy was  
9 discovering the auction that SVP had instituted with  
10 respect to the sale of the lease assets; is that  
11 correct?

12 MR. SHAUGHNESSY: Objection.

13 THE WITNESS: No, it's FitzWalter,  
14 not SVP.

15 BY MR. GRIFFIN:

16 Q Sorry. Thank you for the clarification.  
17 Let me try that again.

18 Your testimony is that the thing that  
19 triggered JPL's consideration of bankruptcy was  
20 discovering the auction that FitzWalter had  
21 instituted with respect to the sale of the lease  
22 assets; is that correct?

23 A That is correct. And let me clarify it.

24 At that point in time, we lost belief  
25 that there would be a process that would pay back

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1  
2 every creditor. And paying back every creditor is of  
3 utmost importance to us, if we can help this. So it  
4 was a drastic measure that was meant to secure that  
5 every creditor is being paid back.

6 Q Did you consider submitting a bid?

7 A We didn't have the cash to do so.

8 Q Did you consider approaching someone to  
9 obtain the cash?

10 A We relatively quickly and even before  
11 that had started doing that, but so fast, with such a  
12 short notice period, it's not possible to raise money  
13 against an asset that is on lease to Vietnam.

14 Q The asset you would have been purchasing  
15 in the sale would have been the lease asset, not the  
16 planes, right?

17 MR. SHAUGHNESSY: Objection.

18 THE WITNESS: Had we -- had we  
19 taken -- had we -- had we had faith in  
20 the process of this being a fair auction,  
21 it might have been different. We didn't  
22 have that.

23 BY MR. GRIFFIN:

24 Q Why not?

25 A Because in terms of the auctions and the

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way that it was announced, the speed of the action taken after the termination of the lease. First, the speed of the termination of the lease; second, the speed of the auction itself shortly thereafter, and then the very restrictive terms around confidentiality agreements, no warranties, no reps, the security deposits, the wire transfer instructions and the ability of FitzWalter to step in itself didn't make us believe that we could -- that this was a process that we should participate in.

Q Who was running the auction?

MR. SHAUGHNESSY: Objection.

THE WITNESS: A company called

Airborne Capital.

BY MR. GRIFFIN:

Q Had you ever heard of Airborne Capital before?

A Yes.

Q What -- what is Airborne Capital?

A Airborne Capital is our nextdoor neighbor in Shannon. They're sitting in the same office building we are sitting in. And I personally know of the management of Airborne Capital for a minimum of 15 years. I've sold him aircraft in various jobs



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2 beforehand.

3 Q So they're an established entity,

4 correct?

5 A Well, I would say they're a rather small

6 platform at this stage that has a couple of

7 individuals that have experience. There's no

8 question. But I don't think that they are comparable

9 to a large leasing company, or even a mid-sized

10 leasing company, my personal belief.

11 Q It's not a company that just started

12 auctioning planes yesterday, right? They've been

13 around for a long time?

14 A The company, such not. The company as

15 such is a relatively new creation. The two

16 individuals involved have been in the industry for a

17 long -- two of the individuals that I know are -- the

18 two top guys, have been in the industry for a long

19 period of time.

20 Q So the people running the auction, you

21 knew them and you know that they've been in the

22 industry for quite some time, correct?

23 A That is correct.

24 Q What specifically about the terms of the

25 auction did you take issue with?

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A The tight confidentiality agreement. The timeline of the deposit, the no reps and warranties clauses, and then the decision making with the ability of FitzWalter to step in. Plus the wire instructions as to when the transaction -- the money had to be wired, and then the ability of first FitzWalter in that.

Q Did you believe the lease assets would sell for a significant price in this auction?

A No.

Q What did you expect the lease assets to sell for?

A I had not gone through the analysis. I think it requires a very specific type of investor to come in, because it requires somebody to be willing to go after Vietnam Airlines and force Vietnam Airlines to pay, under uncertainty. So I don't think --

Q Did you --

A I don't think it's a marketable product.

Q Could you have bought the lease assets and just re-negotiated them with Vietnam Airlines?

MR. SHAUGHNESSY: Objection. Calls for speculation.

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2 THE WITNESS: I, frankly speaking,  
3 don't know on whether we -- I don't know.  
4 It could have happened, but I don't  
5 think -- we had not the -- we had not the  
6 belief it would be successful.

7 BY MR. GRIFFIN:

8 Q You decided not to submit a bid because  
9 you didn't think it would be successful; is that  
10 correct?

11 MR. SHAUGHNESSY: Objection.

12 THE WITNESS: Correct. That's  
13 correct.

14 BY MR. GRIFFIN:

15 Q Did you not think it would be successful  
16 because you couldn't submit a bid that was high  
17 enough or some other reason?

18 MR. SHAUGHNESSY: Objection.

19 THE WITNESS: I would have not even  
20 known how to price this.

21 BY MR. GRIFFIN:

22 Q What do you think the lease assets are  
23 worth?

24 MR. SHAUGHNESSY: Objection.

25 THE WITNESS: I can't price this.

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It's pure speculation. It's not a transparent process. It's not a bankruptcy process. A bankruptcy process, well, in the U.S., I have been involved, I've seen these assets being sold. I know you get cents on the dollars and you can try to price this.

This was out of sight, and is Vietnam, in a country like Vietnam. So I had no handle, we had no handle the prices, nor would --

BY MR. GRIFFIN:

Q Your --

A -- indeed, anybody would have.

Q Sorry for talking over you. Is it your testimony that JPL -- strike that.

Is it your testimony that, despite JPL's knowledge of the status of the lease with VNA and the relationship with VNA, it's still unable to value the lease assets?

MR. SHAUGHNESSY: Objection.

THE WITNESS: Can you repeat the question, please?

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2 BY MR. GRIFFIN:

3 Q Is it your testimony that, despite --  
4 despite JPL's knowledge of the leases with VNA and  
5 the relationship with VNA, it is still unable to  
6 value the lease assets?

7 MR. SHAUGHNESSY: Objection.

8 THE WITNESS: I would have valued  
9 the lease assets with zero. I had to,  
10 because we had essentially a lease that  
11 was about to get agreed with V -- or was  
12 about agreed with VNA, and I could have  
13 not gone to VNA and asked them to pay for  
14 this. I would have not wanted, one.

15 BY MR. GRIFFIN:

16 Q You valued the lease assets that were  
17 being sold by FitzWalter as zero; is that correct?

18 A And I would assume the vast majority  
19 of -- yes, or close to zero. And I would assume that  
20 the vast majority of market participants would do the  
21 same.

22 Q So any amount paid for the lease would  
23 have been more than what they were worth; is that  
24 correct?

25 MR. SHAUGHNESSY: Objection.

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THE WITNESS: It might be worth something to somebody else. I can't speculate on that. It was certainly worth something to FitzWalter, and they would have won the auction. That was our belief. They would have paid essentially any price to win this.

BY MR. GRIFFIN:

Q Whatever price the person who won the auction paid, those funds would be used by the security agent to pay off a portion of the debt of the debtors; is that correct?

MR. SHAUGHNESSY: Objection.

THE WITNESS: I think so, but it would go according to seniority, obviously.

BY MR. GRIFFIN:

Q It would go down the waterfall provided in the proceeds agreement, right?

MR. SHAUGHNESSY: Objection.

THE WITNESS: Yeah.

THE REPORTER: That answer was covered up. Sorry.

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2 MR. GRIFFIN: I'll just ask it  
3 again.

4 BY MR. GRIFFIN:

5 Q It would go -- strike that.

6 Whatever price the person who won the  
7 auction paid, that amount would be used to pay back a  
8 portion of the debtors' debts by going through the  
9 waterfall in the proceeds agreement; is that correct?

10 MR. SHAUGHNESSY: Objection.

11 THE WITNESS: That is my  
12 understanding. Had that --

13 BY MR. GRIFFIN:

14 Q You didn't think that -- I'm sorry. I  
15 didn't mean to interrupt you.

16 A No, no. I wanted to say, had that amount  
17 been a small amount, which I would assume, then it  
18 would have done relatively little to the debt  
19 outstanding and, with that, the asset would have been  
20 disenfranchised from the debt.

21 So I would value that asset at 30 to  
22 40 million if there's no lease attached. That would  
23 have led to a massive -- massive loss for every debt  
24 investor.

25 Q Your testimony is that the planes without

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2 the associated VNA lease are each only worth 30 to  
3 \$40 million?

4 A Would be my best guesstimate.

5 MR. SHAUGHNESSY: Objection.

6 THE WITNESS: Would be my best  
7 guesstimate. I would not pay more for it  
8 personally.

9 BY MR. GRIFFIN:

10 Q Why are the planes only worth 30 to  
11 \$40 million without the associated lease asset?

12 MR. SHAUGHNESSY: Objection.

13 THE WITNESS: Because you would  
14 need to go to Vietnam and would need to  
15 kind of do a deal with Vietnam as,  
16 essentially, the new owner of the  
17 aircraft, or you need to repossess. If  
18 you have to repossess, the cost of the  
19 repossession, to have a reconfiguration,  
20 is easily something around 15 to  
21 \$20 million in total. So subtract that  
22 out of, let's say, a soft value, market  
23 value.

24 Then you would need to go and find  
25 a new lessee. You have marketing costs,



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2 you have down time. You have in the  
3 meantime costs of ensuring and storing.  
4 You have a workman's lien, likely, on  
5 the -- on one of the engines because one  
6 of the engines was in or is in a shop  
7 called N3, which is a joint venture  
8 between Rolls and Lufthansa. So there  
9 would be a workman lien that has to be  
10 paid off.

11 You need to collect your engines.  
12 All the engines are -- which is very  
13 typical in large airlines -- are being  
14 moved around to various aircraft types.  
15 Without the help of Vietnam, that would  
16 have never been possible easily. The  
17 APUs are a different aircraft. That is a  
18 logistical nightmare. And then you need  
19 to get the records. You need to get the  
20 records out of Vietnam. And if you don't  
21 have an airline cooperating, eventually  
22 you can't use that.

23 But it's a very long and costly  
24 exercise.

25 Once you have the aircraft, you

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2 need then to market the aircraft in an  
3 environment that is soft.

4 So I have heard -- this is hearsay,  
5 but I've heard about lease rates that are  
6 300K, 400K for a new aircraft, and some  
7 of them are just power by the hour and  
8 nothing, for relatively short leases.

9 But with an A350, you don't want to  
10 do a short lease. You need to put so  
11 much money into the aircraft upfront that  
12 you want to do a long lease, at a good  
13 and high lease rental. Otherwise, the  
14 value is diminished. It's a perishable  
15 asset. It losses value over time.

16 So my 30 to 40 million, that's my  
17 personal view. That's what I -- that  
18 might be conservative. That's what I  
19 would pay for an aircraft asset without a  
20 lease attached. But I would believe,  
21 given that I -- since I know how large  
22 leasing companies would look at this, I  
23 would believe that others would not look  
24 very different.

25

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2 BY MR. GRIFFIN:

3 Q There's a lot in there. I'm going to  
4 break that apart a bit.

5 You mentioned that it was a -- the lease  
6 assets are a perishable asset. What does that mean?

7 MR. SHAUGHNESSY: Objection.

8 THE WITNESS: Leasing companies  
9 depreciate assets over 25 years, down to  
10 15 percent or down to 10 percent. So  
11 there's something like a 3.4 to 3.6 per  
12 annum depreciation.

13 And then you have market  
14 fluctuations in rates, and that is  
15 obviously depending on whether the market  
16 is strong or whether the market is soft.  
17 So years '17, '18, '19, saw a very strong  
18 aviation leasing market, very strong  
19 aircraft values. The years '20, '21 have  
20 seen those values drop significantly.

21 And on wide-bodies, the drop in  
22 value has exceeded the drop -- has  
23 exceeded the depreciation that leasing  
24 companies normally would apply.  
25 Therefore, to take an aircraft at this

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2 stage, repossess and then try to sell it  
3 will face a soft market.

4 BY MR. GRIFFIN:

5 Q You said you -- strike that.

6 How much does the use of the asset by the  
7 airline impact the value of the asset over time?

8 MR. EDELMAN: Objection. Isn't  
9 this very far afield from the scope of  
10 this deposition?

11 MR. GRIFFIN: His declaration says  
12 that the value of the assets decreases --  
13 the value of the plane decreases by  
14 \$300,000 a month, so it's not far afield  
15 of anything. Thank you.

16 MR. EDELMAN: Your question was  
17 much broader. If you limit to what's  
18 stated in the declaration, that might be  
19 helpful.

20 BY MR. GRIFFIN:

21 Q How much does the use of the air -- of  
22 the asset by the airline impact the value of the  
23 asset over time?

24 MR. SHAUGHNESSY: Objection.

25 THE WITNESS: So it all depends in

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2 the end on whether the airline will pay  
3 for it or not. If you're obviously  
4 repossessing the aircraft, then the  
5 aircraft will not pay any more for it,  
6 except if you then have claims that you  
7 can force through the system.

8 The 300,000 per month mentioned is  
9 on -- based on utilization, and based on  
10 cost of utilization is our relatively --  
11 it's our estimate as to what the value  
12 decreases.

13 Vietnam has paid 500K rental a  
14 month, so they have paid more at this  
15 point in time than what they would have  
16 utilized. If and when the lease would  
17 get extended to Vietnam, or reinstated to  
18 Vietnam -- that's a better word, strike  
19 extended -- then obviously we would get  
20 return conditions in which Vietnam would  
21 make up for that shortfall.

22 If you don't, then you get a  
23 fraction of the dollar, which is your  
24 claim amount, and that you have to  
25 extract out of Vietnam.

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2 BY MR. GRIFFIN:

3 Q When you mentioned claim amount. It's  
4 not like you don't have any ability to get these -- a  
5 return for this. You just need to go after Vietnam,  
6 right, and force them to give it back to you, right?

7 MR. SHAUGHNESSY: Objection.

8 THE WITNESS: Yes, you would need  
9 to force them to give it back to you.

10 You would need them to force them, then,  
11 to do something about this.

12 BY MR. GRIFFIN:

13 Q And there's rights under the respective  
14 agreements that give you the ability, whoever owns  
15 those assets, to go after Vietnam and get those  
16 recoveries; is that correct?

17 MR. SHAUGHNESSY: Objection.

18 THE WITNESS: That is correct. But  
19 you would need to kind of still collect  
20 it, and you need to force it through the  
21 system with Vietnam.

22 BY MR. GRIFFIN:

23 Q The ability to go after those claims is  
24 not something you're interested in JPL because of  
25 your relationship with VNA? You weren't going to sue

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2 them, right?

3 MR. SHAUGHNESSY: Objection.

4 THE WITNESS: I mean, that is to a

5 certain extent speculation I'm doing, but

6 the general thinking would be, suing an

7 airline is the last resort. If there's

8 nothing else that is possible, then on

9 behalf of our investors we would have a

10 duty to do so, as well, but we would

11 rather avoid.

12 BY MR. GRIFFIN:

13 Q You mentioned that there were other  
14 entities that might be willing to do that, for  
15 example, hedge funds, right?

16 MR. SHAUGHNESSY: Objection.

17 THE WITNESS: Correct.

18 BY MR. GRIFFIN:

19 Q A hedge fund might place a value on these  
20 lease asset, separate from the plane, above zero,  
21 correct?

22 MR. SHAUGHNESSY: Objection.

23 THE WITNESS: That's speculation on  
24 my part, but I think that could be the  
25 case.

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2 BY MR. GRIFFIN:

3 Q Do you know whether VNA paid any money to  
4 the debtors since termination?

5 MR. SHAUGHNESSY: Objection.

6 THE WITNESS: I don't think they  
7 did.

8 BY MR. GRIFFIN:

9 Q Do the debtors have any source of cash  
10 flows other than the payments on these VNA leases?

11 MR. SHAUGHNESSY: Objection.

12 THE WITNESS: No, they don't.

13 BY MR. GRIFFIN:

14 Q If the lease assets were sold away from  
15 the -- strike that.

16 If the lease assets were sold in the  
17 auction, the debtors would still own the aircraft; is  
18 that correct?

19 A That is correct.

20 MR. SHAUGHNESSY: Objection.

21 BY MR. GRIFFIN:

22 Q It would have the ability to re-lease  
23 those airplanes, correct?

24 MR. SHAUGHNESSY: Objection.

25 THE WITNESS: Theoretically, yes,



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but there is a glut of wide-body aircraft  
that's available in the market. So this  
is a very long, drawn out process that  
can take -- it's not months. This is  
years before you get another lessee.

Or you go to certain -- what I  
would call -- less credible lease  
entities, and they need to make that  
analysis on whether am I willing to put  
as much money as needed into it to get it  
there, and can I collect this.

BY MR. GRIFFIN:

Q If JPL wanted to continue operating these  
planes with VNA, it could have submitted a bid in the  
auction, bought the leases and just agreed to  
re-negotiate the leases, instead of pursuing the  
termination claims, correct?

MR. SHAUGHNESSY: Objection. Calls  
for speculation.

THE WITNESS: Yeah, I -- it's  
speculative. I mean, it could -- the  
loans were in arrears, so the next step  
could have been default on the loans. We  
simply don't -- didn't see that as a

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2 viable option, but it's speculation.

3 BY MR. GRIFFIN:

4 Q Did you object to the auction?

5 MR. SHAUGHNESSY: Objection. Who

6 are you talking about?

7 BY MR. GRIFFIN:

8 Q Did the debtors submit a formal objection  
9 to the auction?

10 A No, not that I remember.

11 Q Did the debtors go --

12 A I mean --

13 Q -- and try to get -- strike that. I  
14 didn't mean to interrupt. If you had other things to  
15 say, please.

16 A I wanted to make one more comment.

17 We had sent a letter to FitzWalter when  
18 they were becoming the security agent, and that  
19 letter got unanswered -- got not an answer. We  
20 debated on whether they could become a security agent  
21 because there were certain provisions with regard to  
22 the requirement of becoming a security agent, and we  
23 never got an answer on this, and the next action was  
24 the auction.

25 So we simply did not have the belief that

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2 this would be a fair process.

3 Q When did you send this letter to

4 FitzWalter?

5 A Shortly after the -- shortly after the

6 termination of the leases and shortly after they

7 became the security agent.

8 Q You mentioned that, in this letter, you

9 questioned whether FitzWalter could be the security

10 agent; is that correct?

11 A Yes --

12 Q What's your --

13 A -- as far as I recall.

14 Q -- basis -- sorry.

15 Sitting here today, do you think

16 FitzWalter can serve as the security agent?

17 MR. SHAUGHNESSY: Objection. Calls

18 for a legal conclusion.

19 THE WITNESS: Yeah, I can't say

20 that. This letter was drafted by our

21 legal counsel.

22 BY MR. GRIFFIN:

23 Q Did you review the letter?

24 A No, I did not.

25 Q Do you know the content of the letter?

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2 A That letter was sent when I had a private  
3 emergency and I was not available.

4 Q All you know about the letter is there  
5 were -- it raised issues about FitzWalter's ability  
6 to serve as a security agent; is that correct?

7 MR. SHAUGHNESSY: Objection.

8 THE WITNESS: That is my  
9 understanding.

10 BY MR. GRIFFIN:

11 Q Turning back to your declaration, which  
12 is Document No. 78, Exhibit 1.

13 MR. SHAUGHNESSY: This is the  
14 supplemental declaration, Mr. Griffin?

15 MR. GRIFFIN: Yes, the supplemental  
16 declaration.

17 BY MR. GRIFFIN:

18 Q In the end of Paragraph 4, it talks about  
19 extensive internal discussions about the filing of  
20 the bankruptcy. And at the end it says: And the  
21 consequences for filing bankruptcy relief.

22 Do you see that?

23 A I see that, yeah.

24 Q Without disclosing discussions with  
25 counsel, what consequences are you referring to here?

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2 MR. SHAUGHNESSY: And I'll just  
3 supplement that with instructing the  
4 witness not to answer if he believes that  
5 his knowledge of the consequences derived  
6 solely from discussions with counsel.

7 You can otherwise answer.

8 THE WITNESS: So I'll give a --  
9 then I can't say everything, obviously.  
10 I'll give an answer that is dealing with  
11 our general concerns that we had with  
12 regards to consequence of filing for  
13 bankruptcy.

14 So we're an entity that buys  
15 annually about three to 4 billion-dollars  
16 worth of assets. These assets are being  
17 purchased, partially warehoused, in the  
18 joint venture partially with Airbus,  
19 partially with also our own financial  
20 means, and then they are sold to our  
21 Japanese investors. We have about two  
22 and a half thousand Japanese investors  
23 that regularly invest with us.

24 Every of those assets that have  
25 been sold to Japanese investors goes into

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2 a special purpose vehicle. We sometimes  
3 bundle this into -- more than one asset  
4 into one SPC. That can also happen. It  
5 goes into those vehicles and then we need  
6 to raise nonrecourse debt.

7 So we perfectly understand that  
8 there was a clause in the contract that  
9 effectively prohibits us from filing for  
10 Chapter 11. So we discussed the  
11 consequences of filing for bankruptcy  
12 relief with that clause in mind, but also  
13 with regard to what and how are we going  
14 to raise in the future nonrecourse debt  
15 in case we are being seen as defending  
16 what we deemed to be all creditors and  
17 not one creditor.

18 And then comes the legal counsel  
19 process through that, consultation  
20 process, we came to the conclusion that  
21 Chapter 11 is the only viable process.

22 BY MR. GRIFFIN:

23 Q You mentioned in that answer that there  
24 was a clause preventing the filing of the bankruptcy.  
25 What are you referring to there?

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2 MR. EDELMAN: Objection. I'm going  
3 to just ask the witness not to delve into  
4 legal matters that were discussed with  
5 counsel. The witness can answer to the  
6 extent it dealt with matters that were  
7 not covered by legal discussions.

8 THE WITNESS: So my understanding  
9 is it's an SPC. My understanding is that  
10 there is a clause in the contract that  
11 prohibits the debtors to file for Chapter  
12 11 -- or for bankruptcy, not for Chapter  
13 11.

14 But we saw this as the only  
15 sensible alternative, especially given  
16 that we had more than hopes at that point  
17 in time that we would be capable of  
18 paying everybody back. And this was, to  
19 us, more important than the contract of  
20 or this specific clause in the contract.

21 BY MR. GRIFFIN:

22 Q I think you're referring to the proceeds  
23 agreement when you're referring to the contract.  
24 Let's get it up so we have everybody on the same page  
25 here.

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2 And we can go through this with each  
3 plane if we want, but it's my understanding the  
4 proceeds agreement for the -- each of the debtors is  
5 essentially identical. Is that generally your  
6 understanding?

7 MR. SHAUGHNESSY: Objection.

8 THE WITNESS: I would think so, but  
9 I can't be sure.

10 BY MR. GRIFFIN:

11 Q If we need to go through it with both  
12 planes, we'll do it. I'm marking as Exhibit No. 3  
13 the proceeds agreement for MSN 111 and JPA number --  
14 JPA No. 111 and MSN-067.

15 (Loechteken Exhibit No. 3 was  
16 marked for the record.)

17 BY MR. GRIFFIN:

18 Q Please let me know when you see that.

19 MR. SHAUGHNESSY: Mr. Loechteken,  
20 take your time if you want to review the  
21 document.

22 THE WITNESS: I have it open. Let  
23 me -- this is a 120-page document.

24 BY MR. GRIFFIN:

25 Q I understand that. You mentioned a



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particular provision in the contract and you said that there was something that prevented the entities from filing for bankruptcy.

I think I know what you're talking about, but I wanted to verify with you so there was no ambiguity about what -- what the provision of the agreement is.

MR. SHAUGHNESSY: And again, Mr. Loechteken, only answer to the extent you knew about whatever provision is going to be shown to you without the advice of counsel or discussions with counsel.

MR. EDELMAN: And I would like to reiterate that I'd actually like to instruct the witness not to answer to the extent it delves into matters that were discussed with legal calls or any fruits of those legal calls. That's an instruction not to -- not to disclose privileged matters.

BY MR. GRIFFIN:

Q If you turn to Section 3.1 of the proceeds agreement for JPA No. 111, it's on page five

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2 of Exhibit No. 3. Let me know when you're there.

3 MR. SHAUGHNESSY: I'm sorry,  
4 Mr. Griffin. You said page five, and  
5 what section are we on?

6 MR. GRIFFIN: Page five, Section  
7 3.1 or Paragraph 3.1. It's in the  
8 Non-Petitioning Section.

9 MR. SHAUGHNESSY: Hold on. Let's  
10 go by pages on the document, because that  
11 would be page three.

12 MR. GRIFFIN: I'm sorry.

13 MR. SHAUGHNESSY: Just so nobody is  
14 confused.

15 MR. GRIFFIN: Okay. That makes  
16 sense.

17 MR. SHAUGHNESSY: Thank you.

18 BY MR. GRIFFIN:

19 Q Are you there?

20 A I'm there.

21 Q If you see this section, Section 3, it's  
22 called Non-Petitioning.

23 And Section 3.1 says: The borrower  
24 parent hereby agrees in favor of each of the financed  
25 parties that until the secured obligation's discharge

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2 date, it shall not -- and if you skip down to Section  
3 3.1.3 it says -- and shall procure that its  
4 affiliates will not file or join in any petition to  
5 commence any winding-up proceedings by or against the  
6 borrower or the intermediate lessor or any other  
7 action or proceedings for the winding up,  
8 dissolution, administration or examinership of the  
9 borrower or the intermediate lessor, or take or  
10 acquiesce in any other action which might reasonably  
11 be expected to lead to the bankruptcy or insolvency  
12 of the borrower or the intermediate lessor, stayed as  
13 required by applicable law or with the consent of the  
14 security agent.)

15 Do you see that?

16 A I see that.

17 Q And JPL, in fact, supported the filing of  
18 this bankruptcy; is that correct?

19 A That is correct.

20 Q Okay. With knowledge that it would  
21 breach this provision of the agreement, correct?

22 MR. EDELMAN: Objection.

23 MR. SHAUGHNESSY: Objection.

24 That's an objection.

25 MR. EDELMAN: Objection. Calls for

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2 a legal conclusion and speculation. Go  
3 ahead.

4 MR. SHAUGHNESSY: Yeah, no,  
5 objection to the same thing. Calls for a  
6 legal conclusion. This paragraph is a  
7 legal document. Its govern -- has many,  
8 you know, terms of art like bankruptcy,  
9 insolvency. And your question goes into  
10 matters that are -- I believe, are  
11 privileged.

12 I'm instructing the witness not to  
13 answer anything about privileged matters,  
14 an express instruction not to discuss  
15 privileged discussions.

16 MR. GRIFFIN: Are you instructing  
17 the witness not to answer?

18 MR. SHAUGHNESSY: If the witness  
19 can reveal anything that does not reflect  
20 legal advice or discussions with counsel,  
21 he may answer, subject to my objections  
22 that it calls for speculation and also  
23 calls for a legal conclusion.

24 MR. EDELMAN: And I'd like to  
25 reiterate that objection, and I think

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2 your question, by its terms, asks for  
3 legally privileged matters. But to the  
4 extent it doesn't, that's not an  
5 instruction, but I am instructing him not  
6 to answer any privileged matters.

7 MR. SHAUGHNESSY: You may answer,  
8 Mr. Loechteken, subject to what we just  
9 said.

10 THE WITNESS: So what I can say  
11 without disclosing the counsel -- advice  
12 of counsel discussion is that this was a  
13 clause that concerned us.

14 BY MR. GRIFFIN:

15 Q And you testified that you knew the  
16 clause prevented filing bankruptcy, but needed to be  
17 seen to be defending your business model; is that  
18 correct?

19 MR. SHAUGHNESSY: Objection.

20 THE WITNESS: That's not correct.  
21 It's not our business model. It's  
22 defending the creditors.

23 BY MR. GRIFFIN:

24 Q Defending which creditor?

25 A All creditors.

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2 Q So you were defending FitzWalter?

3 A Yeah, FitzWalter, plus all the other  
4 senior creditors and the juniors.

5 Q In this specific transaction?

6 A We were of the belief that, in this  
7 specific transaction, we were -- be capable of  
8 generating enough cash to pay back everyone,  
9 including some recovery -- small recovery, but some  
10 recovery for our investors.

11 So we saw this as a win-win. Everybody  
12 would get paid off. It would lead to a situation  
13 where we would be seen as doing the right thing and  
14 the good thing and there would be, essentially, no  
15 outstanding debt that would by any means be impaired  
16 or lost loss on other party's behalf. And that is an  
17 important topic for us, as I said.

18 So it's not primarily our investors. Our  
19 investors would have lost the vast majority of the  
20 money. And there's no question, in market terms, as  
21 of today, our investors are not whole. That's clear.  
22 But the structure that we were contemplating and the  
23 process would pay back every creditor.

24 Q You made a --

25 MR. SHAUGHNESSY: All I was going

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to say, Mr. Griffin, we've been going for  
another hour. We should take a break  
soon. If you want to ask a couple more  
questions, that's fine, but we should  
take a break soon.

BY MR. GRIFFIN:

Q You made a decision to breach this  
agreement because you thought you could put together  
a better deal, correct?

MR. SHAUGHNESSY: Objection.

MR. EDELMAN: Objection. Calls for  
a legal conclusion. The witness never  
testified that he -- there was a breach  
of this agreement. That's you putting  
words in his mouth. Objection. Also --

MR. GRIFFIN: You're coaching your  
witness.

MR. EDELMAN: I'm not coaching the  
witness.

MR. GRIFFIN: Your --

MR. EDELMAN: You are badgering the  
witness. You are badgering the witness  
and you're asking about legally  
privileged matters.

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2 MR. SHAUGHNESSY: Okay. Ask the  
3 question.

4 MR. GRIFFIN: He's testified about  
5 this already. If you want to say he's  
6 testified about legally privileged  
7 matters, then he has waived that  
8 privilege. I'm asking him questions, you  
9 are giving your instructions and he's  
10 answering the questions. I would prefer  
11 you stop coaching the witness.

12 MR. EDELMAN: And I would prefer  
13 that you stop asking the witness about  
14 legally privileged matters that we have  
15 to object to every single time.

16 MR. GRIFFIN: Reading a document is  
17 not privileged.

18 MR. EDELMAN: And reading a  
19 document, the document states for itself.  
20 You're badgering the witness.

21 MR. SHAUGHNESSY: Do you want to  
22 re-ask the question or do you want him  
23 to --

24 MR. GRIFFIN: I'll ask it.

25



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2 BY MR. GRIFFIN:

3 Q You made a decision to breach this  
4 agreement because you thought you could put together  
5 a better deal, correct?

6 MR. SHAUGHNESSY: Same objection.

7 MR. EDELMAN: Same objection.

8 THE WITNESS: We were of the belief  
9 it would pay back every creditor.

10 BY MR. GRIFFIN:

11 Q You believed you could pay back every  
12 creditor if you went into bankruptcy, so you ignored  
13 this provision; is that correct?

14 MR. SHAUGHNESSY: Objection.

15 MR. EDELMAN: Objection. Same  
16 objection as before.

17 BY MR. GRIFFIN:

18 Q You can answer.

19 A Oh, I can answer? Okay.

20 MR. SHAUGHNESSY: Why don't you  
21 read back the question again since there  
22 was a long lapse of time.

23 BY MR. GRIFFIN:

24 Q You believed you could pay back every  
25 creditor if you went into bankruptcy, so you ignored

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this provision, specifically provision 3.1.3 of the  
proceeds agreement?

MR. SHAUGHNESSY: Same objection.

MR. EDELMAN: Same objection.

There's an assumption in your question  
which he did not testify to.

MR. SHAUGHNESSY: You may answer.

THE WITNESS: We believed we could  
pay back every creditor.

BY MR. GRIFFIN:

Q I guess we'll keep going.

You believed you could pay back every  
creditor if you went into bankruptcy so you ignored  
this provision, specifically provision 3.1.3 of the  
proceeds agreement; is that correct?

MR. SHAUGHNESSY: Objection.

MR. EDELMAN: Objection. Again,  
you're putting an assumption in the  
witness's mouth.

MR. GRIFFIN: Stop coaching the  
witness.

MR. EDELMAN: Stop this restating  
and putting words in the witness's mouth.  
You're staying that he breached, you're

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saying that he ignored, and he testified  
that goes against what he said.

I mean, this is unethical conduct  
by you. You cannot put words and  
assumptions that directly contradict what  
he said.

BY MR. GRIFFIN:

Q You testified earlier that you knew there  
was a clause that prevented filing bankruptcy,  
correct?

MR. SHAUGHNESSY: Objection.

MR. EDELMAN: Objection.

THE WITNESS: I testified there was  
a clause that could cause potential  
issues.

MR. GRIFFIN: I'm going to go off  
the record. We're going to go back and  
find your prior testimony and then we'll  
keep going. So let's go off the record.

THE VIDEOGRAPHER: The time is  
6:45 p.m. We're off the record.

(Brief pause.)

THE VIDEOGRAPHER: The time is  
6:57 p.m. We're on the record.

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2 BY MR. GRIFFIN:

3 Q Mr. Loechteken, you testified that you  
4 made the decision to file bankruptcy in conjunction  
5 with Mr. Ishikawa; is that correct?

6 A That is correct.

7 Q You two were the decision makers for JPL,  
8 correct?

9 A Correct. There were others that were  
10 weighing in, but we decided.

11 Q And just so it's clear for the record,  
12 you testified earlier that you perfectly understood  
13 that there was a clause in the contract that  
14 effectively prohibited us from filing for Chapter 11,  
15 correct?

16 MR. SHAUGHNESSY: Objection. Calls  
17 for a legal conclusion.

18 MR. EDELMAN: And it's a  
19 misstatement.

20 THE WITNESS: We had a general  
21 understanding that there might be a  
22 clause in the contract, but none of us is  
23 a lawyer, so we can't interpret a legal  
24 situation.

25 Our concern was more on the

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2 commercial side. What is it doing to all  
3 lenders vis-a-vis us and our investors if  
4 we do this or we do the alternative.

5 BY MR. GRIFFIN:

6 Q Did you ask for the securities agent  
7 permission before filing for bankruptcy?

8 MR. SHAUGHNESSY: Objection.

9 THE WITNESS: No.

10 BY MR. GRIFFIN:

11 Q When you decided to file for bankruptcy,  
12 was the plan to do a reorganization?

13 A I don't know what that means.

14 MR. SHAUGHNESSY: Objection.

15 Sorry. Go ahead.

16 THE WITNESS: Sorry. I don't know  
17 what that means.

18 BY MR. GRIFFIN:

19 Q Okay. Were you planning on just going  
20 into bankruptcy and then selling the assets in the  
21 bankruptcy?

22 MR. SHAUGHNESSY: Objection.

23 THE WITNESS: We were planning to  
24 go into bankruptcy to give us the time  
25 necessary to repay all creditors.

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2 BY MR. GRIFFIN:

3 Q With respect to repaying all creditors,  
4 did you have anything in mind about how you could  
5 accomplish that?

6 A We had, at that point in time,  
7 discussions with SVPGlobal about a stalking horse  
8 bid.

9 Q Was there ever any consideration of  
10 obtaining funds yourselves so you could repurchase  
11 the assets?

12 MR. SHAUGHNESSY: Objection.

13 THE WITNESS: You mean repurchase  
14 on behalf of our investors?

15 BY MR. GRIFFIN:

16 Q Yes. So that the debtors could  
17 essentially buy out the loans and get the assets for  
18 themselves.

19 A Certainly that we have these  
20 considerations as well. But given the time frame,  
21 raising of money against an asset, against a lease,  
22 that was not -- at that point in time it was  
23 terminated, that would have taken a lot longer time.

24 So, yes, we would certainly want to do  
25 that if we would be given the time and the ability to

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raise the money.

Q Did you expect that to happen during the  
bankruptcy?

MR. SHAUGHNESSY: Objection.

THE WITNESS: I can't speculate on  
that, but I believe it would be a  
possibility.

BY MR. GRIFFIN:

Q Would that type of restructuring have  
been an important consideration for your business --

MR. SHAUGHNESSY: Objection.

BY MR. GRIFFIN:

Q -- the ability to do that?

A So any restructuring that we would do,  
whether that was a lease or loans, and we have  
been part -- any restructuring we would do, we have  
been agreeing to lease restructurings. We would do,  
obviously, with the idea in mind to protect our  
equity investors.

We perfectly accept seniority of debt  
over equity. There's no question about that. We  
just thought that -- we just think we need to do  
something to be active to assure that there's a fair  
and transparent process that pays back everyone.

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2 Q Was the transaction you were discussing  
3 with SVP an asset purchase or was it refinancing of  
4 your debt?

5 A The SVP discussions were an asset  
6 purchase.

7 Q At the time you decided to go into  
8 bankruptcy, was the intention to accept the SVP  
9 proposal of an asset purchase through an option  
10 process?

11 A It was gate one for us to go through.  
12 Essentially, yes, because it gives us the time and it  
13 gave us the consideration that would allow repayment  
14 of every creditor, and there was very small recovery  
15 to our investors.

16 Q And you said gate one, is that --

17 A Yeah. We -- we have in bankruptcy a bit  
18 nor time to see on whether something else can happen,  
19 either through an auction process, where there was  
20 more being offered by third parties, which we  
21 believed there's a good and fair chance to do so, or  
22 through a refinancing.

23 Q Subsequent to the filing of the  
24 bankruptcy but before you submitted the stalking  
25 horse bid, were there negotiations with people other



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2 than SVP?

3 A No real negotiations.

4 Q Were there any negotiations with anyone  
5 between December 17th and when you agreed to the  
6 asset purchase agreement and term sheet?

7 A There was some discussions, yes.

8 Q With who?

9 A So I personally had discussions with  
10 Blackstone about financing, potentially in  
11 combination with a stalking horse bid, and I had  
12 discussions with Airbus, personally, about same.

13 Q Anyone else?

14 A I reached out to Deutsche, but I didn't  
15 get any response.

16 Q Anyone else?

17 A Not that I had discussions with.

18 Q These discussions were all after the  
19 filing of the bankruptcy, correct?

20 A These discussions, given that there  
21 was -- these discussions evolved. Given that there  
22 was a situation that we had with both FitzWalter and  
23 with SVP, I started these discussions on the  
24 financing basis that -- what you, yourself, suggested  
25 a little earlier, I think in the first week of

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December.

Q For the moment, can you consider the time frame from the filing the bankruptcy on December 17th.

Did you have any of these discussions with a potential stalking horse other than SVP post the filing of the bankruptcy?

A Yes, I think so, we did. So the same parties. The parties I talked to was -- not Deutsche at that point, but Blackstone and Airbus.

Q Blackstone and Airbus; is that correct?

A Yes. Very little hopes, I should also say, because this is a pre-Christmas period and very large organizations have books closed, and it was not going well.

Q The discussions you had both prior and post bankruptcy filing were not going well, except with respect to SVP; is that correct?

MR. SHAUGHNESSY: Objection.

THE WITNESS: I think we could have not gotten this in time.

BY MR. GRIFFIN:

Q But when you say not going well, what did you mean?

1 H. LOECHTEKEN

2 A Timing wise. It is -- it is a process  
3 that requires time for large organizations.

4 Q Did any of the people you contacted have  
5 concerns with the amount you were requesting in terms  
6 of the deal?

7 MR. SHAUGHNESSY: Objection.

8 THE WITNESS: That's a -- on the  
9 other side, not really the amounts. It's  
10 more like can we get this approved, yes  
11 or no.

12 MR. GRIFFIN: Hold on. I think  
13 somebody is off mute but talking in the  
14 background. Is that --

15 MR. SHAUGHNESSY: Mr. Edelman.

16 MR. GRIFFIN: We'll just keep  
17 going.

18 BY MR. GRIFFIN:

19 Q So I think you said, with respect to  
20 Airbus, it wasn't the amount but the time frame; is  
21 that correct?

22 A Correct.

23 Q What about Blackstone?

24 A It was a matter of product and it was a  
25 matter of price and time frame.

1 H. LOECHTEKEN

2 Q What do you mean by product?

3 A Equity, debt, combination of equity or  
4 debt, and then price to it.

5 Q What was the issue with the price?

6 A The initial discussions were under  
7 long-term financing, and the long-term financing  
8 would have been too expensive, way too expensive to  
9 kind of preserve value over time.

10 Q What do you mean by long-term in this  
11 context?

12 A Eight years.

13 Q You didn't want eight years or you did  
14 want eight years? I'm just --

15 A No, I did not want -- I did not want  
16 eight years.

17 Q What time frame were you looking for?

18 A One to two years.

19 Q What would have happened after one to two  
20 years?

21 A Re --

22 MR. SHAUGHNESSY: Objection.

23 THE WITNESS: I mean, it's  
24 speculation, but if I would speculate,  
25 it's a refi, as a stabilized figure.

1 H. LOECHTEKEN

2 BY MR. GRIFFIN:

3 Q The Blackstone deal was for them to re --  
4 for you to refinance the assets, not to sell the  
5 assets; is that correct?

6 A Correct.

7 Q Was that the same thing you were  
8 discussing with Airbus?

9 A Correct.

10 Q With respect to all of the discussions  
11 you were having, were you attempting to refi in all  
12 of them except for the SVP deal?

13 MR. SHAUGHNESSY: Objection.

14 THE WITNESS: I think our  
15 preference would have been to try to refi  
16 everything, logically, because that  
17 would -- if the lease with Vietnam would  
18 come into place, and if there's a little  
19 bit of time passing, the market heals,  
20 then we could raise longer term money at  
21 better conditions.

22 BY MR. GRIFFIN:

23 Q None of those attempted refinances came  
24 to fruition; is that correct?

25 MR. SHAUGHNESSY: Objection.

1 H. LOECHTEKEN

2 THE WITNESS: Not in the time frame  
3 for the stalking horse bid.

4 BY MR. GRIFFIN:

5 Q Do you expect to have refinance offers  
6 during the bid procedures process, if we ever get  
7 there?

8 MR. SHAUGHNESSY: Objection. Calls  
9 for speculation.

10 THE WITNESS: Yeah, I can't  
11 speculate on that. There's discussions  
12 but I don't know about the outcome.

13 MR. EDELMAN: By the way, I  
14 apologize for the interruption, but the  
15 heat went out in my house and the oil  
16 company was just calling me, so I  
17 apologize for that noise.

18 MR. GRIFFIN: No worries. You have  
19 to deal with stuff in your life. It's  
20 all right.

21 BY MR. GRIFFIN:

22 Q With respect to your discussions with  
23 SVP, did you discuss obtaining financing from them?

24 MR. SHAUGHNESSY: Objection.

25 THE WITNESS: There wasn't an

1 H. LOECHTEKEN

2 offer.

3 BY MR. GRIFFIN:

4 Q That was an asset purchase, right?

5 A That was an asset purchase.

6 Q With respect to the asset -- the  
7 negotiations of the asset purchase term sheet, there  
8 is a reference in there to the potential for a -- a  
9 DIP financing or a debtor in possession financing.

10 Are you aware of that?

11 A I think I saw that, yeah.

12 Q Was that important to you?

13 A That was inserted by all lawyers.

14 Q Was that done at your instruction?

15 A No. I took it when it came, but I didn't  
16 instruct.

17 Q That wasn't something that was being used  
18 to tell the investors that the structure may still be  
19 left intact?

20 MR. SHAUGHNESSY: Objection.

21 THE WITNESS: Not to my knowledge.

22 I'm quite certain that our Tokyo  
23 colleagues couldn't even have explained  
24 it.

25

H. LOECHTEKEN

MR. GRIFFIN: I'm going to put in a  
document -- sorry, I'm trying.

(Loechteken Exhibit No. 4 was  
marked for the record.)

BY MR. GRIFFIN:

Q I've marked as Exhibit 4 what's going to  
appear in your Submitted folder as Tab 4,  
JPA111-00000476.

Do you see that?

MR. SHAUGHNESSY: I don't have it.

Oh, okay. The 476?

MR. GRIFFIN: Yes.

MR. SHAUGHNESSY: I see it.

Thanks.

BY MR. GRIFFIN:

Q Do you see this document?

A I see the document, yeah.

Q If you look at the last sentence of the  
third paragraph, it says: The clause regarding a  
replacement DIP is needed as that is what's being  
used to tell the investors that the structure may  
still be left intact. This has no substantive impact  
upon SVP and is needed to get approval from our  
client.



1 H. LOECHTEKEN

2 Do you see that?

3 A I see that, yeah.

4 Q Is this an accurate statement?

5 MR. SHAUGHNESSY: Objection.

6 THE WITNESS: I can't comment on

7 that. Was I copied on this e-mail?

8 BY MR. GRIFFIN:

9 Q No.

10 A I can't comment.

11 Q The client being referred to here is JPL,  
12 correct?

13 MR. SHAUGHNESSY: Objection.

14 THE WITNESS: I assume so.

15 BY MR. GRIFFIN:

16 Q It's sent by the attorneys from Vedder  
17 Price, correct?

18 A That is correct.

19 Q And those are JPL's lawyers?

20 A That is correct.

21 Q Do you understand that one of the issues  
22 in this case is who has a right to the lease assets  
23 related to the Vietnam Airlines?

24 MR. SHAUGHNESSY: Objection.

25 THE WITNESS: I understand it's an

1 H. LOECHTEKEN

2 issue.

3 BY MR. GRIFFIN:

4 Q The leases between VNA are not actually  
5 convenient the debtors and Vietnam Airlines, correct?

6 MR. SHAUGHNESSY: Objection. Calls  
7 for a legal conclusion.

8 THE WITNESS: Sorry. Can you say  
9 it again?

10 BY MR. GRIFFIN:

11 Q I didn't think this was a trick question.

12 I'm saying, VNA has airplane leases and  
13 those leases aren't between the debtors and VNA.  
14 There's someone else in the middle, right?

15 A That's correct.

16 MR. SHAUGHNESSY: Objection.

17 BY MR. GRIFFIN:

18 Q VNA's leases are, in fact, with what's  
19 called the intermediate lessors?

20 MR. SHAUGHNESSY: Objection.

21 THE WITNESS: It is correct, Draco  
22 and Uranus.

23 BY MR. GRIFFIN:

24 Q Yeah, I was going to ask that. So on  
25 the -- the JPA No. 111, the intermediate lessor is

1 H. LOECHTEKEN

2 Draco, correct?

3 A Correct.

4 Q And on JPA No. 49, the intermediate  
5 lessor it is Uranus; is that correct?

6 A Yes. Uranus. It's a star, I believe.

7 Q The debtors have no direct contractual  
8 relationship with VNA?

9 MR. SHAUGHNESSY: Objection.

10 THE WITNESS: It's a head lease,  
11 sublease arrangement.

12 BY MR. GRIFFIN:

13 Q And just to clarify, the head lease is  
14 the debtor has a head lease with the intermediate  
15 lessor, and that would be either Draco or Uranus,  
16 correct?

17 MR. SHAUGHNESSY: Objection.

18 THE WITNESS: That is correct.

19 BY MR. GRIFFIN:

20 Q And then the intermediate lessor actually  
21 leases the -- actually has the arrangement with VNA,  
22 correct?

23 MR. SHAUGHNESSY: Objection.

24 THE WITNESS: Correct.

25

1 H. LOECHTEKEN

2 BY MR. GRIFFIN:

3 Q The intermediate lessors entered into  
4 deed of security agreements with the debtors and  
5 assigned the property defined as the assigned  
6 property to the debtors; is that correct? And that  
7 would be --

8 MR. EDELMAN: Objection as to form.

9 THE WITNESS: It's a legal  
10 question. I think so, but I'm not a  
11 hundred percent certain.

12 MR. GRIFFIN: Let's look at the  
13 documents then. Are you aware that  
14 the -- strike that. I'm unfortunately  
15 having some document issues. I  
16 apologize. Okay.

17 I'm marking Exhibit No. 5.

18 (Loechteken Exhibit No. 5 was  
19 marked for the record.)

20 BY MR. GRIFFIN:

21 Q Let me know when you see Exhibit 5.

22 MR. SHAUGHNESSY: They're not  
23 labeled as exhibits, Justin. You've got  
24 to describe the document.

25

1 H. LOECHTEKEN

2 BY MR. GRIFFIN:

3 Q I apologize. If you go in the Submitted  
4 folder, it's -- the document Exhibit No. 5 is going  
5 to be named 111 Intermediate Lessor Security  
6 Assignment.

7 Do you see that?

8 A Yeah, I see that.

9 MR. SHAUGHNESSY: Mr. Loechteken,  
10 if you want to review the document, you  
11 can review the document.

12 BY MR. GRIFFIN:

13 Q Take your time.

14 A This is a document that I'm not familiar  
15 with. I know it exists, but I am not familiar with  
16 it, but please go ahead.

17 Q This is a document titled Deed of  
18 Security Agreement, and it's with respect to JPA No.  
19 111 as borrower.

20 Do you see that on the first page?

21 A I see that, yeah.

22 Q And this is the agreement whereby the  
23 intermediate lessors assign their properties in the  
24 VNA leases to the debtors, correct?

25 MR. SHAUGHNESSY: Objection.

1 H. LOECHTEKEN

2 THE WITNESS: I assume so. I said

3 I'm not familiar. It says so, so I

4 assume that it will be the content.

5 BY MR. GRIFFIN:

6 Q If you look at page two of the document,

7 Section 3.1. Are you there?

8 A Yes, I'm there.

9 Q It states, The Lessor, and for the  
10 purposes of this agreement, that's the intermediate  
11 lessor, right?

12 MR. SHAUGHNESSY: Objection.

13 MR. EDELMAN: Objection. I think  
14 the witness testified he wasn't familiar  
15 with this document, so why are you  
16 badgering the witness with questions?

17 BY MR. GRIFFIN:

18 Q For the purpose of this agreement, the  
19 lessor is the intermediate lessor, correct?

20 MR. SHAUGHNESSY: Objection.

21 THE WITNESS: I'm not familiar with  
22 the document. I can only speculate. I  
23 assume you're right. I don't know.

24 BY MR. GRIFFIN:

25 Q You won't be offering any testimony about

1 H. LOECHTEKEN

2 the assignments between the intermediate lessor and  
3 the debtor; is that correct?

4 MR. SHAUGHNESSY: Objection.

5 Vague. If you can restate it more  
6 clearly, please.

7 BY MR. GRIFFIN:

8 Q Do you intend to offer any testimony  
9 about the assignments between any of the entities and  
10 the debtor?

11 MR. SHAUGHNESSY: Same objection.

12 THE WITNESS: I'm not familiar with  
13 those documents and I'm not a lawyer.

14 BY MR. GRIFFIN:

15 Q Okay. That's not my question.

16 Do you, in this proceeding, plan to offer  
17 any testimony about the document Exhibit No. 5?

18 A No, I don't plan to do so.

19 Q Do you plan to offer any testimony about  
20 any of the deal documents at issue in this dispute?

21 MR. SHAUGHNESSY: Objection.

22 THE WITNESS: What are the other  
23 deal documents?

24 BY MR. GRIFFIN:

25 Q There are hundreds. We can go through

1 H. LOECHTEKEN

2 every one of them and find out whether you've seen it  
3 and plan on testifying about it.

4 But you said you didn't see this one.  
5 This is one that -- you know there's an issue in this  
6 case about the assignment, correct?

7 MR. SHAUGHNESSY: Mr. Griffin,  
8 maybe I can help with this. Are you  
9 asking if he's going to offer an opinion  
10 or testimony that could be any way  
11 related to any of these documents?

12 I think if you're looking for an  
13 opinion, it could be a -- you know, an  
14 easier question and avoid further  
15 follow-up questions.

16 MR. GRIFFIN: He's the only witness  
17 who I think is going to give fact  
18 testimony at the hearing, and to the  
19 extent that there's any fact testimony  
20 about how these documents work together  
21 and what rights lie in what place and who  
22 has them, then that's testimony that we  
23 want to understand before the hearing.

24 MR. SHAUGHNESSY: Oh, that's a fair  
25 question, I think. You can restate it.



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BY MR. GRIFFIN:

Q I'm going to -- so we can go through the document. If you look at the first page of the document on the definition of lessor -- or sorry -- I guess the first page after the Table of Contents. So the page number one, internal page of the document number one.

It defines the lessor as DEA Leasing Ireland 12, Limited.

Do you see that?

A I see that, yeah.

Q Is that the intermediate lessor here?

MR. SHAUGHNESSY: Objection.

THE WITNESS: I don't know, frankly. This was put together before I joined the company.

BY MR. GRIFFIN:

Q You don't know whether JP Leasing Draco Limited is the entity that was formerly known as DEA Leasing Ireland 12 Limited?

A No, I don't.

MR. SHAUGHNESSY: Objection.

THE WITNESS: I don't.

1 H. LOECHTEKEN

2 BY MR. GRIFFIN:

3 Q Are you going to be giving any testimony  
4 about the assignment between Draco Limited and the  
5 debtor --

6 MR. SHAUGHNESSY: Objection.

7 BY MR. GRIFFIN:

8 Q -- of the VNA lease?

9 A I am not qualified to do so and I don't  
10 know the documents well enough.

11 MR. SHAUGHNESSY: Mr. Griffin, I'm  
12 happy to stipulate on the record  
13 regarding what his direct testimony will  
14 be about. We've discussed this before.  
15 If you'd like me, I can say on the record  
16 what his testimony is confined to for the  
17 hearing next Wednesday, if that would  
18 help move this along.

19 MR. GRIFFIN: Sure.

20 MR. SHAUGHNESSY: Mr. Loechteken's  
21 direct testimony is limited to his  
22 declaration, in its entirety, dated  
23 January 21st, 2022, as well as his  
24 declaration from January 10th, 2022, with  
25 the exception of Section 3, the term

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2 sheet in that declaration.

3 MR. GRIFFIN: If we look at --  
4 sorry, I didn't mean to interrupt.

5 If you look at the declaration from  
6 January 1st -- January 21st, 2022, which  
7 is Exhibit 1, in Paragraph 5 of that, the  
8 second half of that paragraph says: The  
9 bankruptcy was filed because the debtors  
10 determined -- and this is a part in  
11 quote -- debtors determined posed a  
12 threat of irreparably diminishing the  
13 value of their assets.

14 And I think the question of what  
15 assets are at issue here and what the  
16 debtor's assets are is something that is  
17 going to be discussed at the hearing.

18 So if the witness isn't going to  
19 testify that the lease assets are the  
20 debtor's assets, then we don't need to go  
21 through this discussion, but if he's  
22 going to testify that the lease assets  
23 are the assets of the debtor, then I  
24 think, one, we need to have this  
25 discussion and, two, there seems to be a

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problem because this witness doesn't have  
personal knowledge of the relevant  
documents.

MR. SHAUGHNESSY: I'm happy to talk  
about this off the record so we don't  
have to have a colloquy.

MR. GRIFFIN: Let's do that.

MR. SHAUGHNESSY: I want to go off  
the record for a minute.

THE VIDEOGRAPHER: The time is  
7:30 p.m. We're off the record.

(Brief pause.)

THE VIDEOGRAPHER: The time is  
7:52 p.m., we're on the record.

BY MR. GRIFFIN:

Q Mr. Loechteken, Exhibit No. 1 is your  
supplemental declaration. Can you please pull that  
back up on the screen when you have a moment.

A Yes, I have it open.

Q In this document you discuss on Paragraph  
5, you say: There was a threat of irreparably  
diminishing the value of their assets.

Do you see that?

A Yes, I see that.

1 H. LOECHTEKEN

2 Q What assets were you referring to here?

3 A The two aircraft.

4 Q You're not referring to the lease assets;  
5 is that correct?

6 A I think the question on who owns the  
7 assets, including the lease assets, is not one I'm  
8 qualified to answer.

9 Q And just to clarify, when you're saying  
10 there is a threat to irreparably diminishing the  
11 value of their assets, you're only referring to the  
12 airplanes; is that correct?

13 MR. SHAUGHNESSY: Objection to  
14 form.

15 THE WITNESS: So I'm referring to  
16 the aircraft assets. We have a lease  
17 that is essentially quasi agreed with or  
18 can be implemented with Vietnam, so I  
19 would view this commercially as the  
20 aircraft as well as the leases.

21 BY MR. GRIFFIN:

22 Q And when you're talking about the  
23 leases -- that's what we were doing before the break.

24 So there's the aircraft and then there's  
25 the leases with VNA, correct?

1 H. LOECHTEKEN

2 A Correct.

3 Q The leases with VNA are between the  
4 intermediate lessor and the VNA -- and VNA, correct?

5 A Correct.

6 MR. SHAUGHNESSY: Objection.

7 BY MR. GRIFFIN:

8 Q And they're assigned from the  
9 intermediate lessor -- absolutely assigned from the  
10 intermediate lessor to the debtor, correct?

11 MR. SHAUGHNESSY: Objection. Calls  
12 for a legal conclusion.

13 MR. EDELMAN: Objection as to form.

14 MR. SHAUGHNESSY: Go ahead and  
15 answer.

16 THE WITNESS: Sorry, Brian, I  
17 didn't get that.

18 MR. SHAUGHNESSY: You can answer.

19 THE WITNESS: Yeah. So this is all  
20 legal analysis where we were advising our  
21 lawyers on, and all lawyers advised that  
22 the risk --

23 MR. SHAUGHNESSY: Wait, wait.  
24 Don't reveal the legal advice. You  
25 cannot reveal legal advice.

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THE WITNESS: All right.

BY MR. GRIFFIN:

Q All I want -- for the purpose of this question, I just want to know what you're referring to when you say the value of their assets. What are we referring to in Paragraph 5 of Exhibit 1?

MR. SHAUGHNESSY: Objection. Asked and answered.

But answer -- you can answer.

THE WITNESS: Aircraft asset as well as leases.

BY MR. GRIFFIN:

Q Are you going to testify here about -- when you say their assets, are you stating as a matter of fact that the debtors have a current property interest in the lease assets?

MR. SHAUGHNESSY: Objection.

THE WITNESS: That is a legal question. I think that's the whole dispute.

BY MR. GRIFFIN:

Q So you're not going to testify as a matter of fact that the debtors have a current possessory interest in the lease assets?

1 H. LOECHTEKEN

2 MR. SHAUGHNESSY: Objection. Asked  
3 and answered.

4 THE WITNESS: It's a legal  
5 question, and I think that that's exactly  
6 the dispute we're having.

7 BY MR. GRIFFIN:

8 Q It's a dispute we're having and it's a  
9 legal question, so you, as a fact witness, aren't  
10 going to testify that the debtors have a current  
11 possessory interest in those lease assets, correct?

12 MR. SHAUGHNESSY: Objection.

13 THE WITNESS: I rely on my lawyers.  
14 It's -- I have no firm own opinion on  
15 this. It is on legal advice that we're  
16 acting.

17 BY MR. GRIFFIN:

18 Q You can't testify as a matter of fact  
19 that there's a current possessory interest in the  
20 lease assets of the debtor's, correct?

21 MR. SHAUGHNESSY: Objection.

22 BY MR. GRIFFIN:

23 Q You're relying on your lawyers, correct?

24 MR. SHAUGHNESSY: Objection.

25 THE WITNESS: We're relying on our



1 H. LOECHTEKEN

2 lawyers.

3 BY MR. GRIFFIN:

4 Q And whether it's a current possessory  
5 interest is going to be determined based upon legal  
6 arguments, but you as a fact witness aren't going to  
7 say, yes, those are our leased assets as a matter of  
8 fact?

9 MR. SHAUGHNESSY: Objection.

10 THE WITNESS: As I said, we rely on  
11 our lawyers. It's a legal dispute.

12 BY MR. GRIFFIN:

13 Q Did you ever represent to anyone that you  
14 could sell the lease assets to?

15 MR. SHAUGHNESSY: Objection.

16 THE WITNESS: Not to my knowledge.

17 BY MR. GRIFFIN:

18 Q So you never discussed with SVP, for  
19 example that the debtor could sell both the planes  
20 and the lease assets?

21 MR. SHAUGHNESSY: Objection.

22 THE WITNESS: I -- I personally did  
23 not discuss this possessory, no.

24 BY MR. GRIFFIN:

25 Q Do you know whether anybody from JPL or

1 H. LOECHTEKEN

2 the debtors did discuss this with SVP?

3 A The only person who had real discussions,  
4 and there was limited, with SVP was myself, to my  
5 best knowledge.

6 Q Have you had any discussions with anyone  
7 about whether the debtors can sell the lease assets?

8 MR. SHAUGHNESSY: Are you asking  
9 aside from counsel, Mr. Griffin, or  
10 anyone?

11 MR. GRIFFIN: Thank you for the  
12 clarification.

13 BY MR. GRIFFIN:

14 Q Have you had any discussions with anyone  
15 other than counsel about whether the debtors can sell  
16 the lease assets?

17 A No. We did not -- I mean -- no, we did  
18 not.

19 Q If you turn to -- in your initial  
20 declaration, which is Exhibit No. 2. It's Docket 44.  
21 Do you see that?

22 A Yes.

23 Q If you turn to page five of your  
24 declaration, it's discussing sales and marketing  
25 efforts, correct?

1 H. LOECHTEKEN

2 A Correct.

3 Q And it talks about the sale of debtor's  
4 hundred percent ownership interest in the purchase  
5 assets.

6 Do you see that?

7 A Yes, I see that.

8 Q What is debtor selling?

9 MR. SHAUGHNESSY: Objection. Asked  
10 and answered.

11 THE WITNESS: Based on the legal  
12 advice we were getting, the debtor is  
13 selling the -- I can't review, but it's  
14 selling all the assets.

15 BY MR. GRIFFIN:

16 Q You can't testify about whether the  
17 purchase assets -- about what's included in the  
18 purchase assets?

19 MR. SHAUGHNESSY: Objection.

20 THE WITNESS: My commercial  
21 assumption is that the purchase assets  
22 will include the aircraft, as well as the  
23 claims.

24 BY MR. GRIFFIN:

25 Q By claims, you're talking about the lease

1 H. LOECHTEKEN

2 claims?

3 A I am talking about the lease claims.

4 Q When you say that -- in the next  
5 paragraph, Under the proposed bidding procedures, the  
6 debtors and their advisors will market the purchase  
7 assets, are you going to market the sale of both the  
8 planes and the lease claim?

9 A We will market -- yes, we will market the  
10 assets, including the lease claims, and we would also  
11 potentially indicate to buyers that there might be a  
12 new lease that they could themselves enter into.

13 Q Are you going to represent -- planning to  
14 represent to the buyers that the assets, in fact,  
15 include ownership of the lease claims?

16 MR. SHAUGHNESSY: Objection.

17 THE WITNESS: Commercially, yes, we  
18 will.

19 BY MR. GRIFFIN:

20 Q What does commercially yes mean?

21 A Subject to the legal dispute because  
22 FitzWalter is claiming that they own the lease assets  
23 and, according to advice we're getting, there's a  
24 dispute. That's for the court to decide.

25 Q With respect to the stalking horse bid

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you currently have, does that include both the planes  
and the leased assets?

A Yes, it does.

Q If the leased assets are determined not  
to be part of the debtor's assets, does the stalking  
horse still have to proceed?

MR. SHAUGHNESSY: Objection.

THE WITNESS: This is something  
that goes beyond my area of expertise.  
We make the assumption based on counsel  
that this is a question that is being  
decided by the court and, based on that,  
we believe it will stand.

BY MR. GRIFFIN:

Q It will stand that you're right, correct?

A Correct.

Q If we're right, meaning if FitzWalter  
Capital is right, and the lease assets are not part  
of the debtor's estate, does the stalking horse bid  
you have continue in effect, meaning they have to  
purchase just the claims for the amount currently  
stated?

MR. SHAUGHNESSY: Objection. Calls  
for a legal conclusion.

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THE WITNESS: I can't comment on  
that. I think this is a question that  
needs to be decided by the court.

BY MR. GRIFFIN:

Q When negotiating the stalking horse bid,  
did you make any representations about whether the  
lease assets were part of what is going to be sold in  
the stalking horse process?

A I didn't make those representations.

Q Did anybody make any representations on  
behalf of the debtors regarding the lease assets?

A The details of the term sheet were  
negotiated by our counsel.

Q So if we wanted to understand the details  
of the negotiations and get factual testimony, we  
would need to depose your lawyers?

MR. SHAUGHNESSY: Objection.

THE WITNESS: I think I can't -- I  
can't comment on those legal discussions.

BY MR. GRIFFIN:

Q Is there anybody other than one of your  
lawyers who has any knowledge about whether  
representations regarding the purchased assets,  
including the lease assets, were made to SVP?

1 H. LOECHTEKEN

2 MR. SHAUGHNESSY: Objection.

3 THE WITNESS: Not to my knowledge.

4 You should --

5 BY MR. GRIFFIN:

6 Q Do you know if SVP thinks it's buying the  
7 leased assets?

8 MR. SHAUGHNESSY: Objection.

9 THE WITNESS: I can't speculate.

10 BY MR. GRIFFIN:

11 Q In Paragraph 21 of Exhibit 2, if you turn  
12 to that, specifically page nine.

13 MR. SHAUGHNESSY: Are we on the  
14 original declaration, Mr. Griffin?

15 MR. GRIFFIN: Yes.

16 MR. SHAUGHNESSY: I'm sorry. Can  
17 you repeat where we're going? I'm sorry.

18 MR. GRIFFIN: Page nine, Paragraph  
19 21.

20 MR. SHAUGHNESSY: Thank you.

21 BY MR. GRIFFIN:

22 Q This is the section discussing the  
23 bidding procedures and timeline.

24 Do you see that?

25 A I see that, yeah.

1 H. LOECHTEKEN

2 Q And if you look on page nine, you said:  
3 Moreover, I believe that the proposed sale timeline,  
4 including the period of over one month from approval  
5 of the bid procedures to the bid submission deadline,  
6 will benefit all parties as it will provide stability  
7 in the near term regarding the go-forward operation  
8 and utilization of the purchased assets.

9 Do you see that?

10 A I see that, yeah.

11 Q And again, here you're referring to both  
12 the lease assets and the airplane assets, right?

13 A Yes.

14 Q And you don't know what happens if the  
15 lease assets are not part of the purchased assets?

16 MR. SHAUGHNESSY: Objection.

17 THE WITNESS: I can only speculate  
18 on what that would be.

19 BY MR. GRIFFIN:

20 Q What was that?

21 A I would need to speculate on what that  
22 would be, but as I explained earlier, I think the  
23 value would be greatly diminished.

24 Q I understand the value would be greatly  
25 diminished. I'm just trying to determine if -- with



H. LOECHTEKEN

respect to these -- the stalking horse bid and the bidding procedures, if there is, in fact, going to be someone there to buy the assets, if -- the plane assets, if the lease assets aren't there.

So do you have any understanding one way or the other, if the lease assets are determined not to be property of the estate, do you, in fact, have a stalking horse bidder?

MR. SHAUGHNESSY: Objection.

THE WITNESS: That's a legal question. I can't comment on that.

BY MR. GRIFFIN:

Q Have you read the APA?

A Sorry. What is the APA?

Q Have you read the asset purchase agreement?

A Can you show me the document?

Q Sure.

(Loechteken Exhibit No. 6 was marked for the record.)

BY MR. GRIFFIN:

Q I'm marking as Exhibit No. 6 the Asset Purchase Agreement submitted as Exhibit D, Doc 585 -- Docket No. 58-5.

1 H. LOECHTEKEN

2 MR. SHAUGHNESSY: I don't see it  
3 yet.

4 MR. GRIFFIN: It says Stalking  
5 Horse APA.

6 MR. SHAUGHNESSY: Oh, yeah. I see  
7 it. Got it.

8 BY MR. GRIFFIN:

9 Q Are you familiar with this document?

10 A I've read it.

11 Q Do you know what assets are being  
12 included in the transaction contemplated by this  
13 document?

14 A Yes.

15 Q What assets are those?

16 A It is listed under the Roman 1 through to  
17 Roman 11.

18 Q Roman 1 through what? Sorry.

19 A Roman 11.

20 MR. SHAUGHNESSY: Mr. Loechteken,  
21 why don't you refer to a page number so  
22 we can make sure we're looking at the  
23 same thing.

24 THE WITNESS: So --

25 MR. SHAUGHNESSY: Are we looking at

1 H. LOECHTEKEN

2 page three or page four? There are page  
3 notations at the very top where it says  
4 page 2 of 47, page 3 of 47. I just want  
5 to make sure we're all looking at the  
6 same page.

7 MR. GRIFFIN: Thank you. Right.

8 THE WITNESS: I think the start to  
9 look at, as my understanding of this  
10 document on -- what's the page number?

11 MR. SHAUGHNESSY: It's at the very  
12 top of the page, where it says PG.

13 THE WITNESS: Oh, PG. If we start  
14 at PG -- PG 3, the Purchase and Sale,  
15 Article 2.

16 BY MR. GRIFFIN:

17 Q So you're saying Article 2 defines what's  
18 being sold; is that correct?

19 MR. SHAUGHNESSY: Objection.

20 THE WITNESS: I think so.

21 BY MR. GRIFFIN:

22 Q Is it your testimony that the debtors  
23 have the ability to sell each of the things listed in  
24 Section 2?

25 MR. SHAUGHNESSY: Objection.

H. LOECHTEKEN

THE WITNESS: Based on the legal  
advice, yes.

BY MR. GRIFFIN:

Q So your only basis to testify about the  
ability to sell these -- strike that.

If you look at Article 2 of Exhibit 6,  
Section 2.01.

Do you see that?

A Yes.

Q Okay. And it talks about the purchase  
and sale of transferred assets, assumed liabilities  
and excluded liabilities, as a heading there.

Do you see that?

A Yes.

Q If you go down to the first romanette,  
are these the -- in the romanettes describing what  
debtor is selling to SVP?

MR. SHAUGHNESSY: Objection.

THE WITNESS: This is my  
understanding based on legal input.

BY MR. GRIFFIN:

Q What happens to this agreement if any of  
these things are determined not to be assets of the  
debtor?

1 H. LOECHTEKEN

2 MR. SHAUGHNESSY: Objection.

3 THE WITNESS: That's a legal  
4 question that I can't comment on.

5 BY MR. GRIFFIN:

6 Q Is it not --

7 A It's for the court to decide.

8 Q I'm sorry. I didn't mean to interrupt.  
9 I'm not trying to talk over you.

10 Is there any provision of this agreement  
11 that states what happens if any of the assets  
12 identified in Section 2.01 are determined not to be  
13 part of the debtor's estate?

14 MR. SHAUGHNESSY: Objection.

15 THE WITNESS: The question of the  
16 legal interpretation of an agreement, I'm  
17 not qualified to do so.

18 BY MR. GRIFFIN:

19 Q Do the debtors make any representations  
20 in this agreement about whether they have the ability  
21 to sell the assets listed in Section 2.01?

22 MR. SHAUGHNESSY: Objection.

23 THE WITNESS: Again, that is a  
24 question of legal interpretation that I  
25 can't comment on.

H. LOECHTEKEN

BY MR. GRIFFIN:

Q If you look at Section 4.01 of this agreement, Exhibit No. 6, page 9 of 47, if you're looking at the top --

A Yes.

Q -- are these the representations and warranties of the seller?

Do you see that?

MR. SHAUGHNESSY: Objection.

THE WITNESS: That's a legal matter

I'm not qualified to comment on.

BY MR. GRIFFIN:

Q So you don't know one way or the other what's being sold, what happens if the things aren't actually assets to the debtor or anything along those lines?

MR. SHAUGHNESSY: Objection.

THE WITNESS: It's a matter of legal dispute. It would be solved by the by the court. I have a commercial understanding of what is to be sold, but on where they fall out is a matter for the court to decide on.

1 H. LOECHTEKEN

2 BY MR. GRIFFIN:

3 Q The dispute isn't what happens -- I'm

4 asking -- this is a matter of fact -- what are --

5 Is SVP buying the lease assets, and if

6 they're not part of your estate, do you have a deal?

7 MR. SHAUGHNESSY: Objection.

8 MR. EDELMAN: Objection to form.

9 The document speaks --

10 MR. SHAUGHNESSY: Asked and  
11 answered.

12 MR. EDELMAN: The document speaks  
13 for itself. Why are you harassing the  
14 witness? That's what you're really  
15 doing. The document is legal document  
16 and it says what it says.

17 MR. SHAUGHNESSY: You can answer.

18 THE WITNESS: It's a legal matter.

19 I would refer to the lawyers.

20 BY MR. GRIFFIN:

21 Q So you don't know?

22 A I don't know.

23 Q Would anybody from JPL know what happens  
24 to this deal if it doesn't know -- if it doesn't own  
25 the lease assets?

1 H. LOECHTEKEN

2 MR. SHAUGHNESSY: Objection.

3 THE WITNESS: We're relying on  
4 advice from our lawyers.

5 BY MR. GRIFFIN:

6 Q That wasn't my question.

7 Do you know whether anybody at JPL or the  
8 debtors is aware of what happens if the lease assets  
9 aren't part of this transaction?

10 MR. SHAUGHNESSY: Objection.

11 THE WITNESS: I don't think so. I  
12 don't think that anybody has a better  
13 understanding at this point other than  
14 me.

15 BY MR. GRIFFIN:

16 Q As a matter of fact, is it your  
17 expectation that the purchase price reflected in the  
18 asset purchase agreement will be sufficient to pay  
19 off all of the secured obligations?

20 A That is my expectation, yes.

21 Q What are the secured obligations?

22 A The senior loan, the junior loan, plus  
23 associated accrued interests and the cost.

24 Q What's that understanding based on?

25 MR. SHAUGHNESSY: Objection.



1 H. LOECHTEKEN

2 THE WITNESS: Excuse me. I didn't  
3 get the question.

4 BY MR. GRIFFIN:

5 Q Sorry about that. Let me back up.

6 Is that everything that is within the  
7 secured obligations?

8 A That's my understanding.

9 Q What's that understanding based on?

10 A Advice from our lawyers.

11 Q So you have no basis to testify about  
12 what the secured obligations are other than what's  
13 been told to you by your lawyers?

14 MR. SHAUGHNESSY: Objection.

15 MR. EDELMAN: Objection. Also,  
16 I'll ask the witness not to testify about  
17 the documents or any of the legal  
18 discussions.

19 THE WITNESS: Yeah, based -- it's  
20 based on advice of our lawyers.

21 BY MR. GRIFFIN:

22 Q So, given that, you won't be testifying  
23 as a matter of fact that the proposed bid from SVP  
24 will, in fact, pay off the secured obligations; is  
25 that correct?

1 H. LOECHTEKEN

2 MR. SHAUGHNESSY: Objection.

3 Mischaracterizes testimony.

4 THE WITNESS: My understanding is  
5 it will, and it will create a recovery, a  
6 small recovery, for our investors.

7 BY MR. GRIFFIN:

8 Q You have no factual basis to make that  
9 statement, do you?

10 MR. SHAUGHNESSY: Objection.

11 THE WITNESS: It's based on legal  
12 analysis and legal calculations.

13 BY MR. GRIFFIN:

14 Q Are you going to be testifying about what  
15 your lawyers told you?

16 MR. SHAUGHNESSY: Objection.

17 THE WITNESS: I think I can't  
18 testify about what my lawyers told me.

19 BY MR. GRIFFIN:

20 Q I don't think you can, either, unless you  
21 want to waive the privilege.

22 So I'm saying, as a matter of fact,  
23 excluding what your lawyers told you, do you have any  
24 basis to testify that the amounts reflected in the  
25 asset purchase agreement will, in fact, pay off the

1 H. LOECHTEKEN

2 secured obligations?

3 MR. SHAUGHNESSY: Objection.

4 THE WITNESS: It is my assumption  
5 it will be based on the senior debt  
6 outstanding, the junior debt outstanding  
7 and the interest costs.

8 BY MR. GRIFFIN:

9 Q But those aren't all the secured  
10 obligations under the agreements, are they?

11 MR. SHAUGHNESSY: Objection.

12 THE WITNESS: Sorry. Was it a  
13 question or was it a statement?

14 MR. SHAUGHNESSY: Why don't you  
15 repeat the question.

16 BY MR. GRIFFIN:

17 Q You testified that it's your assumption  
18 that all the -- strike that. You testified -- let me  
19 just ask the question.

20 Do you have any basis to testify that the  
21 amounts reflected in the asset purchase agreement  
22 will, in fact, pay off the secured obligations?

23 MR. SHAUGHNESSY: Objection.

24 THE WITNESS: It is my assumption  
25 it will based on -- based on the legal

1 H. LOECHTEKEN

2 advice we got.

3 BY MR. GRIFFIN:

4 Q Again, you're not going to be testifying  
5 about the statements from your counsel, are you?

6 A No.

7 Q So excluding the statements from your  
8 counsel, do you have any factual basis to testify  
9 that the amount reflected in the asset purchase  
10 agreement will, in fact, pay off all of the secured  
11 obligation?

12 MR. SHAUGHNESSY: Objection. Asked  
13 and answered.

14 THE WITNESS: I can only repeat  
15 what I've been saying. This has been  
16 based on our legal advice and the  
17 calculations and the analysis that's been  
18 done by our legal experts.

19 BY MR. GRIFFIN:

20 Q And I -- it's my job to close you out  
21 about what you can testify about. So I'm just trying  
22 to say, you're not going to testify about your legal  
23 advice, right?

24 A No, I'm not.

25 MR. SHAUGHNESSY: Objection.

1 H. LOECHTEKEN

2 BY MR. GRIFFIN:

3 Q Okay. And without that legal advice,  
4 there is no factual basis that you can testify to  
5 that the amounts in the asset purchase agreement  
6 will, in fact, pay off all of the secured  
7 obligations?

8 MR. EDELMAN: Objection as to form.

9 MR. SHAUGHNESSY: Objection.

10 MR. EDELMAN: Objection to form.

11 The document speaks for itself. I think  
12 the documents actually state that it  
13 will, but the document -- you don't need  
14 to harass the witness about what the  
15 document says. The document says what it  
16 says, and you're just asking the same  
17 question 15 times.

18 MR. GRIFFIN: Do you want to get on  
19 the stand? I can ask you questions. We  
20 can do this.

21 MR. EDELMAN: We're harassing the  
22 witness. He's answered the --

23 MR. GRIFFIN: If the witness would  
24 just answer the question no, we could  
25 move on. How about you tell your witness

1 H. LOECHTEKEN

2 to answer the question.

3 MR. EDELMAN: Objection as to form  
4 and, you know, again harassing. The  
5 document speaks for itself.

6 MR. GRIFFIN: Anything else?

7 MR. SHAUGHNESSY: Why don't you  
8 re-ask the question, Mr. Griffin.

9 BY MR. GRIFFIN:

10 Q Without referring to legal advice, you  
11 have no factual basis to testify that the amounts in  
12 the asset purchase agreement will, in fact, pay off  
13 all the secured obligations in the transaction  
14 documents?

15 MR. SHAUGHNESSY: Objection.

16 MR. EDELMAN: Same objection.

17 THE WITNESS: This has been  
18 analyzed by our lawyers and we rely on  
19 the legal advice, and I can add now the  
20 document speaks for itself.

21 MR. GRIFFIN: Zach, do we have the  
22 UCC payoff notice in our documents?

23 MR. RUSSELL: It's not uploaded.

24 MR. GRIFFIN: Can you get that and  
25 then we can come back to that.

1 H. LOECHTEKEN

2 MR. RUSSELL: The document should  
3 be in the Submitted folder.

4 MR. SHAUGHNESSY: What's the name  
5 of the document?

6 MR. RUSSELL: It starts 2022-1-21  
7 QE Letter with Debtors Request to Pursue.

8 MR. SHAUGHNESSY: Okay.

9 MR. GRIFFIN: Thank you.

10 (Loechteken Exhibit No. 7 was  
11 marked for the record.)

12 BY MR. GRIFFIN:

13 Q This has been marked -- what's been  
14 marked as Exhibit 6 -- 7 -- sorry. A letter dated  
15 January 21st, 2022 from Quinn Emanuel to the debtors.

16 Do you see that?

17 A I see that, yes.

18 Q And if you go to the second to last page  
19 of this document, Appendix 1.

20 A Yes. Okay.

21 Q This is the information related to MSN  
22 67, which is for JPA No. 111; is that correct?

23 No, I'm representing to you that this is  
24 the -- is information for MSN 67 for JPA No. 111. Do  
25 you have that in mind?

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2 A Yeah, I see that here.

3 Q Do you have any basis to testify that  
4 these -- that any of these amounts are not a secured  
5 obligation of JPA 111?

6 MR. SHAUGHNESSY: Objection.

7 THE WITNESS: There's elements in  
8 here that are clearly outside my area of  
9 expertise and I can't comment on that.

10 BY MR. GRIFFIN:

11 Q So you can't testify one way or the other  
12 whether any of the elements listed in Appendix 1 of  
13 Exhibit 7 are not secured obligation of debtor JPA  
14 No. 111?

15 MR. SHAUGHNESSY: Objection.

16 Mischaracterizes testimony.

17 THE WITNESS: I -- this would  
18 require legal input and requires legal  
19 analysis. I cannot -- I cannot comment  
20 on this.

21 BY MR. GRIFFIN:

22 Q So to clarify, you can't testify  
23 factually whether any of these ele -- these things  
24 are not secured obligations of the debtor, JPA 111?

25 MR. SHAUGHNESSY: Objection.



1 H. LOECHTEKEN

2 MR. EDELMAN: Objection as to form,  
3 calls for a legal conclusion.

4 THE WITNESS: I need to rely on the  
5 lawyers for this. This is outside my  
6 area of expertise.

7 BY MR. GRIFFIN:

8 Q I understand that you're saying that this  
9 is outside your area of expertise.

10 What I'm trying to confirm is, because  
11 it's outside your area of expertise, you,  
12 Mr. Loechteken, are not going to testify factually  
13 about these items in Appendix 1 relating to JPA 111?

14 MR. SHAUGHNESSY: Objection. Asked  
15 and answered.

16 MR. EDELMAN: Objection to form.

17 THE WITNESS: Yes, as I said  
18 already, I need to rely on the legal  
19 analysis. This is outside of what I want  
20 to comment and can comment on.

21 BY MR. GRIFFIN:

22 Q Is the senior principal 87 million  
23 dollars 870 -- sorry.

24 Is the senior principal on the JPA No.  
25 111, \$87,087,569?

1 H. LOECHTEKEN

2 MR. SHAUGHNESSY: Objection.

3 THE WITNESS: The number sounds  
4 right, but I don't have that at hand and  
5 I can't comment on whether it's right or  
6 wrong. The magnitude sounds right.

7 BY MR. GRIFFIN:

8 Q So you can't dispute the specific number  
9 based upon --

10 MR. SHAUGHNESSY: Objection.

11 MR. EDELMAN: Objection. You know  
12 also you're asking the witness about a  
13 document that you sent after the start of  
14 the weekend. All -- this whole line of  
15 questioning is just harassing the  
16 witness.

17 It's beyond the scope of the  
18 deposition. You know, it's a document  
19 that was just produced by the --  
20 FitzWalter over the weekend. Everything  
21 here is just harassing the witness.

22 MR. GRIFFIN: So do you want to  
23 kick the hearing and do the deposition in  
24 a week or two so we can look at the  
25 documents and testify to the facts, or do

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you want him to say he's not going to  
testify to the facts. That's all that  
I'm asking him to do, so he can say no or  
we can keep going.

MR. SHAUGHNESSY: Let's keep going.

BY MR. GRIFFIN:

Q Do you dispute that the senior principal,  
as of today, is \$87,870,569.

MR. SHAUGHNESSY: Objection.

MR. EDELMAN: Objection.

THE WITNESS: I need more time to  
analyze this and I need time to discuss  
it with my lawyers. I can't make  
statements this way or the other.

BY MR. GRIFFIN:

Q Okay. So are you going to testify about  
what the amount of the senior principal is at the  
upcoming hearing?

MR. SHAUGHNESSY: Objection. His  
declarations speak for themselves.

MR. EDELMAN: Objection. It's also  
beyond the scope of the deposition.

MR. GRIFFIN: There's no beyond the  
scope of a personal deposition. This is

1 H. LOECHTEKEN

2 not a 30(b)(6). If you wanted to put up  
3 a 30(b)(6) witness, you had the  
4 opportunity and you chose not to.

5 MR. EDELMAN: No, but this has to  
6 do with relevancy. It's an objection as  
7 to relevancy. I'm not instructing him  
8 not to answer, but it's an objectionable  
9 question.

10 MR. SHAUGHNESSY: All right. Well,  
11 let's keep on going, Justin, please.

12 BY MR. GRIFFIN:

13 Q Do the debtors contend that the amount of  
14 the APA -- the amount reflected in the APA is going  
15 to pay off all the secured obligation?

16 A It is my assumption from my commercial  
17 understanding that it will pay off all the secured  
18 obligations.

19 Q Are the debtors going to offer -- are you  
20 going to offer evidence that the amount of the APA is  
21 going to pay off all the secured obligations?

22 MR. SHAUGHNESSY: Objection.

23 MR. EDELMAN: Objection. The  
24 document -- we've gone through this  
25 before. The document itself speaks for

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itself, and the document is in the  
record.

MR. SHAUGHNESSY: You may answer.

THE WITNESS: I will not -- I  
cannot comment on this. This is a legal  
question. There's a document that speaks  
for itself and it will need to be  
interpreted by the lawyers.

BY MR. GRIFFIN:

Q Do the secured obligations of these  
transaction documents include the breach of the  
non-petitioning clause by filing this bankruptcy?

MR. SHAUGHNESSY: Objection.

THE WITNESS: It's outside the  
scope of my knowledge. I can't comment.  
I would need to have the lawyers to  
comment on this.

BY MR. GRIFFIN:

Q So confirm you're not going to testify  
about that fact, correct?

MR. SHAUGHNESSY: Objection.

THE WITNESS: It's outside the  
scope of my knowledge. It will be --

1 H. LOECHTEKEN

2 BY MR. GRIFFIN:

3 Q Why can't you just say no? Does no not  
4 knot exist in your vocabulary?

5 MR. SHAUGHNESSY: Objection.

6 BY MR. GRIFFIN:

7 Q Are you going to testify that -- strike  
8 that.

9 So, to confirm, you're not going to  
10 testify that the breach of the non-petitioning clause  
11 of the proceeds agreement --

12 MR. GRIFFIN: Let's take a break.

13 Are you okay with taking a break, Brian?

14 MR. SHAUGHNESSY: Yeah, five  
15 minutes good?

16 MR. GRIFFIN: Sure.

17 THE WITNESS:

18 THE VIDEOGRAPHER: The time is  
19 8:37 p.m. We're off the record.

20 (Brief pause.)

21

22 THE VIDEOGRAPHER: The time is  
23 8:45 p.m., we're on the record.

24 BY MR. GRIFFIN:

25 Q Do you know what the secured obligations

1 H. LOECHTEKEN

2 are under the transaction documents?

3 MR. SHAUGHNESSY: Objection.

4 THE WITNESS: Broadly speaking,  
5 yes.

6 BY MR. GRIFFIN:

7 Q What are the secured obligations?

8 MR. SHAUGHNESSY: Objection.

9 THE WITNESS: The ones that I know,  
10 but the rest would need to be analyzed by  
11 my legal counselors.

12 The senior principal, the interest,  
13 the default, the junior principal  
14 interest default and the swap rate cost  
15 and the interest related.

16 BY MR. GRIFFIN:

17 Q Are you aware that the secured  
18 obligations means any and all monies, liabilities and  
19 obligations, whether they're actual or contingent,  
20 whether now existing or hereafter arising, whether or  
21 not for the payment of money and including without  
22 limitation any obligation or liability to pay damages  
23 from time to time owing to any of the finance parties  
24 by any obligor pursuant to any transaction document,  
25 notwithstanding that the recourse of the finance

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2 parties -- strike that -- notwithstanding the  
3 recourse of the finance parties against any person  
4 may be limited in recourse.

5 Does that --

6 MR. SHAUGHNESSY: Objection.

7 BY MR. GRIFFIN:

8 Q Have you ever heard that definition of  
9 secured obligations?

10 MR. EDELMAN: Objection. Justin,  
11 you're just reading the document.

12 THE WITNESS: This is something I  
13 would need to rely on my lawyers on. I  
14 have not seen that document.

15 BY MR. GRIFFIN:

16 Q So you don't have any basis to testify  
17 whether the secured obligations include more than the  
18 things that you just testified about, right?

19 MR. SHAUGHNESSY: Objection.

20 You can answer.

21 THE WITNESS: I would need to rely  
22 on my lawyers for that.

23 BY MR. GRIFFIN:

24 Q And you're not going to dispute whether  
25 the secured obligations include unpaid rents under



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the head lease, for example?

MR. SHAUGHNESSY: Objection.

THE WITNESS: I have not said that.

I would need to rely on my lawyers on  
this.

BY MR. GRIFFIN:

Q When you say you would need to rely on  
your lawyers, what do you mean?

A I would want them to analyze this against  
the -- against the contracts, and I would like the  
court then to decide on this.

Q Okay. But that's not my question.

My question is are you going to testify  
about this question? Your lawyers might make  
arguments. You're supposed to give evidence and I'm  
trying to understand the evidence that you're going  
to provide to support the arguments that your lawyers  
might make. That's all I'm trying to do in this  
deposition.

So are you going to provide evidence that  
the secured obligations do not include unpaid rent?

MR. SHAUGHNESSY: If I can just say  
one thing, Mr. Griffin, if you don't  
mind.

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2 MR. GRIFFIN: Yeah.

3 MR. SHAUGHNESSY: It is not the  
4 witness, but the debtor's counsel who  
5 will be proffering the evidence. The  
6 evidence has already been proffered. The  
7 declarations speak for themselves.

8 If you want to move to exclude  
9 portions of it, that's fine, but you're  
10 asking the witness if he's planning on  
11 providing testimony. He's not testifying  
12 live on direct, and his redirect will be  
13 in the scope of your cross.

14 MR. GRIFFIN: Yeah, but if I call  
15 him in my case and I want to ask him  
16 these questions, I need to know what the  
17 answers are going to be, right?

18 MR. SHAUGHNESSY: You mean if you  
19 want to do an adverse direct?

20 MR. GRIFFIN: Yes.

21 MR. SHAUGHNESSY: I will note for  
22 the record that while Mr. Griffin is  
23 correct that he could call an adverse  
24 witness, but in front of the judge we  
25 agreed that the deposition would be

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limited to the topics we identified in  
his declarations, and that counsel for  
FitzWalter agreed to that, but  
technically you're correct, you can call  
an adverse direct.

MR. GRIFFIN: And for the record,  
we did discuss that we each would reserve  
our rights to call each other's witness  
in our own case; is that not correct?

MR. SHAUGHNESSY: That's correct.  
If we're going to do more colloquy, we  
can go off the record.

MR. GRIFFIN: Yeah, again, we're  
just preserving stuff for the record.

MR. SHAUGHNESSY: Oh, I get it.  
Fair enough.

BY MR. GRIFFIN:

Q So is unpaid rent under the head lease  
agreement a secured obligation?

MR. EDELMAN: Objection.

THE WITNESS: I cannot comment on  
that. My understanding is that the  
stalking horse bids that we would -- that  
we have provided is going to pay off

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everything that is due to the creditors  
and there will be some small recovery for  
investors. That is my understanding.

BY MR. GRIFFIN:

Q And is it going to go down the waterfall  
provided in the proceeds agreement?

A That is my understanding.

Q And what's your understanding of how  
things get down the waterfall in the proceeds  
agreement?

A I can't comment on that. I don't know.  
I would need to kind of go -- I don't know those  
documents in detail. This is done by in-house  
lawyers and by our legal advisors.

Q So you can't testify about that because  
you don't know?

MR. SHAUGHNESSY: Objection.

THE WITNESS: It is a matter --  
it's a legal matter. I'm relying on  
lawyers.

BY MR. GRIFFIN:

Q You don't know?

MR. SHAUGHNESSY: Can we go off the  
record for a minute, please?

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2 MR. GRIFFIN: Yeah.

3 THE VIDEOGRAPHER: The time is

4 8:51 p.m. We're off the record.

5 (Brief pause.)

6 THE VIDEOGRAPHER: The time is

7 9:05 p.m. we're on the record.

8 BY MR. GRIFFIN:

9 Q Mr. Loechteken, if we turn to your  
10 supplemental declaration, Exhibit No. 1, Paragraph  
11 No. 8. Please let me know when you're there.

12 A I'm there.

13 Q Did you see debtors also -- strike that.

14 Paragraph 8 says: The debtors also  
15 decided to file these Chapter 11 cases so that the  
16 debtor's assets could be marketed and sold so that  
17 all of the debtor's creditors could be paid in full,  
18 not just FitzWalter.

19 Do you see that?

20 A I see that, yes.

21 Q Are you going to testify that the APA  
22 that you agreed to is going to, in fact, pay all the  
23 debtors in full?

24 MR. SHAUGHNESSY: Objection.

25 THE WITNESS: It is my

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understanding that -- and this is based  
on legal input -- that the APA will be  
sufficient to pay back all the senior, as  
well as the junior, and still have some  
recovery for the equity.

BY MR. GRIFFIN:

Q Your only basis for that testimony is  
information from your lawyers, right?

A Basis that it is, yes. It's my  
commercial understanding, but the legal implications  
are from our lawyers, from my lawyers, yes.

Q And then when you say your commercial  
understanding, what are you referring to?

A Senior principal outstanding, the junior  
principal outstanding, the swap breakage cost and the  
interest related.

Q Is it your understanding -- is it your  
testimony that, under the transaction documents,  
those are all of the obligations?

MR. SHAUGHNESSY: Objection.

MR. EDELMAN: Objection.

THE WITNESS: Based on the input of  
my lawyers, it's a legal question that I  
can't answer, but it is the legal advice.

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2 I can't say. So, it's my understanding  
3 based on legal advice.

4 BY MR. GRIFFIN:

5 Q Excepting the legal advice, you don't  
6 know whether the -- those things you mentioned are  
7 all of the secured obligations under the transaction  
8 documents; is that correct?

9 MR. EDELMAN: Objection. Could  
10 the court -- could you repeat what --  
11 what was stated before, because I don't  
12 remember what was stated.

13 (The prior answer was read back  
14 into the record.)

15 MR. EDELMAN: Justin, your question  
16 was asking for a recitation of a list. I  
17 just don't remember the list.

18 MR. GRIFFIN: I'll re-ask with the  
19 list, how about that? Would that be good  
20 for you?

21 MR. EDELMAN: That would be  
22 perfect. Thank you.

23 BY MR. GRIFFIN:

24 Q So outside of legal advice, you don't  
25 know whether anything other than senior principal

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outstanding, junior principal outstanding, the swap  
rate cost and related interest are secured  
obligations?

MR. SHAUGHNESSY: Objection.

THE WITNESS: It is my assumption,  
my commercial assumption, that this is  
sufficient to pay back senior, junior  
and, as I said, some recovery on the  
Japanese investors' behalf.

BY MR. GRIFFIN:

Q Setting aside your assumptions, now  
facts, I want facts. And you said you can't testify  
about what your lawyers told you and I'm not asking  
you to testify about what your lawyers told you.

What I'm asking is, other than the items  
you mentioned, you don't have any testimony about --  
strike that. Sorry.

Outside of legal advice, you don't know  
whether anything other than senior principal  
outstanding, junior principal outstanding, the swap  
rate cost and related interest are secured  
obligations, correct?

MR. SHAUGHNESSY: Objection.

THE WITNESS: It's a legal matter,



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again, that I need to kind of consult with my lawyers on and I cannot give an answer on that one.

It doesn't -- I'll offer a bit more. It doesn't sound -- it doesn't sound commercially right that a senior lender is going to get repaid way over and above what's the principal outstanding and the interest is, plus the swap breakage cost and maybe some reasonable cost. That's my commercial understanding.

And reasonable in this context would need to be determined with the input of our lawyers.

BY MR. GRIFFIN:

Q What the parties agreed to is in the documents, right?

A Right, but I'm not a lawyer. I can't interpret -- I can't interpret legal documents.

Q I'm not asking you to interpret legal documents. I'm asking to answer the questions I ask you.

What the parties agreed to is set forth

1 H. LOECHTEKEN

2 in the documents, correct?

3 A That is my assumption.

4 Q Is it your testimony that the documents  
5 defines senior secured -- or strike that.

6 Is it your testimony that the documents  
7 define secured obligations to only include the  
8 limited things that you mentioned?

9 MR. SHAUGHNESSY: Objection. Calls  
10 for a legal conclusion.

11 THE WITNESS: I think we have --  
12 I've said that before. I'm not familiar  
13 in the detail that you are asking about  
14 the original documents and I will need to  
15 rely on legal advice.

16 BY MR. GRIFFIN:

17 Q So then the answer to my question is  
18 either no or I don't know, not a big stream of words,  
19 so.

20 Is committing antisocial conduct a breach  
21 of the proceeds agreement?

22 MR. SHAUGHNESSY: Objection. Calls  
23 for a legal conclusion.

24 THE WITNESS: I can't comment on  
25 this. That's really a legal question.

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2 So can we go back to that document,

3 because I'm -- I was in a different

4 document. Are you back to the letter you

5 sent?

6 BY MR. GRIFFIN:

7 Q We are back to Exhibit No. 3, the 111

8 proceeds agreement.

9 A Okay.

10 Q Please let me know when you get there.

11 A I'm there.

12 Q If you go to Section 11.3.23 of the

13 document.

14 MR. SHAUGHNESSY: What page is

15 that?

16 MR. GRIFFIN: I'm trying to get  
17 there. Hold on. It's on the internal  
18 page number 24.

19 MR. SHAUGHNESSY: And that's the  
20 number at the very bottom of the page in  
21 the center.

22 THE WITNESS: Sorry. 11.3.19.

23 Okay.

24 BY MR. GRIFFIN:

25 Q If you look at the section, the title is

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2 Antisocial Forces, Relationship and Conduct.

3 Do you see that?

4 A I see that.

5 Q And it says: Intermediate lessor shall

6 ensure that no obligor shall have any relationship

7 with any antisocial forces or any person under the

8 control of any antisocial forces, of any antisocial

9 relationship or engage in any antisocial conduct.

10 Do you see that?

11 A I see that.

12 Q Do you know what antisocial conduct is --

13 A No.

14 Q -- as provided by this statement?

15 A No.

16 Q If you go to page 78 of this document,

17 just let me know when you're there. It's page 80 of

18 119 if you look at the bottom on the exhibit share.

19 A Okay.

20 Q Do you see there's a definition for

21 antisocial conduct?

22 A Uh-huh.

23 Q And it says -- that's Subsection D, is

24 what I'm referring to here. It says, Antisocial

25 conduct means. And Subsection D says: An action to

1 H. LOECHTEKEN

2 defame the reputation or interfere with the business

3 of any finance party by spreading rumor, using

4 fraudulent means or resorting to force.

5 Do you see that?

6 A I see that.

7 Q Have you committed any antisocial conduct

8 as it relates to FitzWalter Capital?

9 MR. SHAUGHNESSY: Objection.

10 THE WITNESS: I'm not sure what

11 you're referring to.

12 BY MR. GRIFFIN:

13 Q I'm asking you a question.

14 Have you committed any antisocial conduct

15 as it relates to FitzWalter Capital?

16 MR. SHAUGHNESSY: Objection. Calls

17 for a legal conclusion.

18 THE WITNESS: I have no means to

19 interpret that. This is a document --

20 and I think we have discussed this --

21 that I'm not familiar with. I have not

22 read this document in its entirety. I

23 see that for the first time and I would

24 need to -- in order to be capable of

25 answering your question I need to have

1 H. LOECHTEKEN

2 legal device.

3 BY MR. GRIFFIN:

4 Q Have you made any disparaging statements  
5 about FitzWalter Capital?

6 A I'm not -- I cannot comment. Can you  
7 show me documents?

8 Q I'm asking you a question.

9 Can you tell me whether you've issued any  
10 disparaging statements about FitzWalter Capital?

11 MR. SHAUGHNESSY: Objection.

12 THE WITNESS: I do not think it is  
13 disparaging. I had conversations with  
14 one party -- or maybe it was a second  
15 party, but I think that's one that  
16 belongs to FitzWalter Capital. It's the  
17 same group. I had discussions with one  
18 party, but I do not think it was  
19 disparaging.

20 BY MR. GRIFFIN:

21 Q What discussions are you thinking of?

22 MR. SHAUGHNESSY: Objection.

23 THE WITNESS: I was -- I don't --  
24 it could be -- but I would like to see  
25 evidence and documentation. It could be

1 H. LOECHTEKEN

2 something that had to do with my Airbus  
3 discussions.

4 BY MR. GRIFFIN:

5 Q I'm not talking -- asking you about a  
6 specific document. I'm asking you about the facts  
7 that you recall.

8 So when you're thinking about these two  
9 conversations, what conversations are you thinking  
10 about?

11 MR. SHAUGHNESSY: Objection.

12 THE WITNESS: I think this is a  
13 matter of questions that I would like --  
14 this is a question I would like to get  
15 some legal advice on.

16 BY MR. GRIFFIN:

17 Q Is it a privileged conversation?

18 A No, it's not a privileged conversation.

19 Q So what is your basis for needing legal  
20 advice? Is it you're worried about criminal  
21 liability?

22 A I'm worrying about -- I don't even  
23 understand precisely what disparaging means. I see  
24 this antisocial conduct means and definitions for the  
25 first time.

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2 MR. SHAUGHNESSY: Mr. Griffin, why

3 don't you use a different word than

4 disparaging, a synonym that he might

5 understand.

6 BY MR. GRIFFIN:

7 Q At this point I just want to know about

8 these two conversations. I'm separated from this

9 term right now.

10 You said you're thinking about two

11 conversations that came to your mind as a result of

12 my question. I'm just asking you about those two

13 conversations right now.

14 A Okay. Good. Then let me be precise.

15 I had a conversation with the CEO of

16 Airborne Capital, but I am not entirely sure on

17 whether that could ever fall under disparaging

18 because I know this gentleman for 15 years and I

19 asked him to consider on whether and what he is doing

20 in working with FitzWalter.

21 Q How did you ask him to do that?

22 A I don't remember.

23 Q You don't remember what words you used?

24 A No. It is a long time ago and it was in

25 the heat of the situation. We were just kind of



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getting aware that things were really moving very fast. I've known the gentleman for a long time. I've sold him assets. I think that helped him to kind of get stuff done at the company where he was in the past. He's our direct neighbor in the same office building in Shannon.

And I believe that what is -- my personal opinion, what is going on here is outside the norms of what is typical in aviation. So I had a call with him, which I thought is more a friendly call, a call from a business partner to another business partner to understand what he's doing and to consider.

So that's one conversation, basically.

Q Before we get off that conversation, what's the gentleman's name?

A Ramki Sundaram. He's the CEO of -- the CEO of Airborne Capital.

Q Airborne Capital is the entity that was marketing the auction, correct?

A Correct. Airborne Capital has supposedly, as you've just been showing me, a marketing contract with FitzWalter.

Q And you knew that Airborne Capital had a marketing contract with FitzWalter when you made this

1 H. LOECHTEKEN

2 call, correct?

3 A I did, yes.

4 Q Around what date -- sorry.

5 Around what date was the call?

6 A It was -- I think it was around the  
7 tenth, around --

8 Q Tenth of what? Sorry.

9 A December, 10th or 11th of December,  
10 around the time that we became aware of the Airborne  
11 Capital selling of the claims without even talking to  
12 us.

13 Q So you weren't pleased with Airborne  
14 Capital, correct?

15 A Well, I was disappointed.

16 Q And you called to express -- you called  
17 to express your disappointment?

18 A I called him to -- yes. I called to ask  
19 on whether he is considering what he's doing.

20 Q Do you remember any of the words you used  
21 in those discussions?

22 A No.

23 Q Did you send any text messages or e-mails  
24 relating to those discussions?

25 A I had one text message that I had sent to

1 H. LOECHTEKEN

2 another gentleman at Airborne before.

3 Q Who is the other gentleman?

4 A His name is Cian Dooley.

5 Q What was that text message about?

6 A That was about that I am respecting him,  
7 if I remember correctly, as a person. I have worked  
8 with him also in -- over 15 years. I negotiated a  
9 large joint venture with him ages ago, and I  
10 expressed my disappointment about the behavior.

11 Q Did you pressure him not to work with  
12 FitzWalter?

13 MR. SHAUGHNESSY: Objection.

14 THE WITNESS: I don't precisely

15 remember, but that could be.

16 BY MR. GRIFFIN:

17 Q Do you remember any of the words that you  
18 used in your text messages?

19 A Can you show me the text message?

20 MR. SHAUGHNESSY: Objection.

21 BY MR. GRIFFIN:

22 Q I wish we had them but you didn't produce  
23 them, so I'm just trying to --

24 Do you remember any of the words you used  
25 in your text --

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2 A No, no.

3 Q And you didn't turn over those text  
4 messages to your counsel; is that correct?

5 MR. SHAUGHNESSY: Objection.

6 THE WITNESS: I don't remember.

7 BY MR. GRIFFIN:

8 Q Does the phrase nail him to the mast ring  
9 any bells?

10 MR. SHAUGHNESSY: Objection.

11 THE WITNESS: I would need to

12 review. Is that the text message you're

13 referring to?

14 BY MR. GRIFFIN:

15 Q I'm asking you questions.

16 Do you remember telling Mr. Dooley that

17 you would nail him to the mast if he continued to

18 work with FitzWalter?

19 MR. SHAUGHNESSY: Objection.

20 THE WITNESS: I don't remember.

21 BY MR. GRIFFIN:

22 Q So you don't remember a conversation -- a  
23 text conversation that happened in the last month  
24 with Mr. Dooley?

25 MR. SHAUGHNESSY: Objection.

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2 THE WITNESS: No, not in detail. I  
3 don't remember. As I told you, I had a  
4 private emergency. My mother was in  
5 hospital or still in hospital. So I was  
6 quite a bit distracted with other things,  
7 as well, so I don't remember.

8 BY MR. GRIFFIN:

9 Q I didn't know that about your mother and  
10 I hope she's doing well.

11 Do you have any reason to dispute that  
12 you told Mr. Dooley that you would nail him to the  
13 mast if he continued to work with FitzWalter Capital?

14 MR. SHAUGHNESSY: Objection.

15 THE WITNESS: I would need to  
16 review the text message and understand  
17 better, and I would also want the kind of  
18 same context.

19 And, frankly speaking, I don't --  
20 do not understand what that means about  
21 disparaging, but okay. That's a  
22 different matter.

23 BY MR. GRIFFIN:

24 Q Did you call FitzWalter Capital a  
25 financial terrorist during a call with Airborne in or

1 H. LOECHTEKEN

2 around December 20th?

3 MR. SHAUGHNESSY: Objection.

4 THE WITNESS: So I had only one

5 call with FitzWalter -- sorry -- with --

6 this was a call with Airborne, you said,

7 right? So this is a call with Ramki. I

8 don't remember.

9 BY MR. GRIFFIN:

10 Q Do you have any reason to deny that you  
11 called FitzWalter a financial terrorist?

12 MR. SHAUGHNESSY: Objection.

13 THE WITNESS: I don't remember.

14 BY MR. GRIFFIN:

15 Q Did you tell Airborne to resign from  
16 working with FitzWalter immediately or face the  
17 consequences?

18 MR. SHAUGHNESSY: Objection.

19 THE WITNESS: I don't remember.

20 BY MR. GRIFFIN:

21 Q Do you have any reason to deny that you  
22 said that?

23 MR. SHAUGHNESSY: Objection.

24 THE WITNESS: I don't remember.

25

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2 BY MR. GRIFFIN:

3 Q Do you believe that's something you might  
4 have said?

5 MR. SHAUGHNESSY: Objection.

6 THE WITNESS: I don't want to  
7 speculate.

8 MR. GRIFFIN: We would like the  
9 communications between Mr. Loechteken and  
10 Airborne to be produced, as consistent  
11 with the discussion we had about  
12 discovery. But we can talk about that  
13 off the record or you can respond now,  
14 it's up to you?

15 MR. SHAUGHNESSY: No, no, we'll  
16 consider the request and we're happy to  
17 talk off the record.

18 BY MR. GRIFFIN:

19 Q You mentioned two conversations, one was  
20 with the CEO of Airborne. What was the other  
21 conversation that you were thinking of?

22 A I had --

23 MR. SHAUGHNESSY: Objection.

24 THE WITNESS: As I said, I had a --  
25 I have ongoing, permanent conversations

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with Airbus. So I have, I'd say, at least twice a week a call with Airbus because we have a large joint venture with Airbus.

And it is very clear that Airbus is, as a company, concerned about the valuations of their assets, and they're concerned about -- that's the whole purpose we have the joint venture. They're concerned about the Japanese market. And I'm quite sure that I updated Airbus about the attempt of FitzWalter to -- not only attempt, about FitzWalter's action in terminating the lease and then going through the auction process.

BY MR. GRIFFIN:

Q How many conversations have you had with Airbus about FitzWalter?

A I don't remember.

Q More than one?

A I think it has been a topic that has gone through more than one conversations, not because I triggered this. Simply because they asked,



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2 especially after the Chapter 11 filing.

3 Q Your conversations with Airbus about  
4 FitzWalter have been an ongoing, regular thing?

5 A I think so, yeah, because it is something  
6 that is of grave concern to the manufacturer.

7 Q Did you call FitzWalter a predatory fund?

8 MR. SHAUGHNESSY: Objection.

9 THE WITNESS: I think I did,

10 because that's in the documents I think

11 we produced, yeah, but you should show me

12 the document again.

13 BY MR. GRIFFIN:

14 Q What do you mean by predatory fund?

15 A I can't even define that. I think I've  
16 been working with distressed funds for quite some  
17 time. A distressed fund looks for weakness and looks  
18 for opportunity, and that is essentially somebody who  
19 then jumps on an opportunity when there is weakness.  
20 That's what I mean by this.

21 Q Were you suggesting that FitzWalter was  
22 doing anything illegal?

23 A No, I have no basis to claim that.

24 Q Was doing anything improper?

25 A Outside the norm of typical aviation

1 H. LOECHTEKEN

2 finance behavior, not improper. I can't say  
3 improper.

4 Q So not improper under the transaction  
5 documents, correct?

6 MR. SHAUGHNESSY: Objection. Calls  
7 for a legal conclusion.

8 THE WITNESS: Yeah, I'm not  
9 familiar enough with the other  
10 transaction documents and I'm not -- I  
11 can't comment on the legal implications  
12 of this.

13 BY MR. GRIFFIN:

14 Q So you're not saying they were doing  
15 anything illegal, correct?

16 A No, I didn't say that.

17 Q Did you and Airbus discuss any ways to  
18 address the concerns that you had about FitzWalter?

19 MR. SHAUGHNESSY: Objection.

20 THE WITNESS: So I asked Airbus on  
21 whether they could be a stalking horse  
22 bid.

23 BY MR. GRIFFIN:

24 Q Anything else?

25 A Not that I remember, no.

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2 Q Did you discuss approaching AWG?

3 A I'm not a member of AWG.

4 Q Did you discuss Airbus raising the issue  
5 with AWG?

6 A They raised it.

7 Q What issue did they raise with AWG?

8 A That I don't know. I'm not a member of  
9 AWG.

10 Q Did you have any discussions with Airbus  
11 about discussing FitzWalter with AWG?

12 MR. SHAUGHNESSY: Objection.

13 THE WITNESS: I don't remember.

14 I --

15 BY MR. GRIFFIN:

16 Q What is AWG?

17 A The Aviation Working Group. It's all  
18 banks, the OEMs and it's large leasing companies.

19 Q Are they import -- sorry. Go ahead.

20 A And they're essentially setting, so to  
21 speak, the standards and principles of our behavior.

22 Q Are they an important player in this  
23 industry?

24 MR. SHAUGHNESSY: Objection.

25 THE WITNESS: I would need to

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speculate. I would think -- we're not a member, but a lot of other leasing companies and the OEMs are and the banks are.

BY MR. GRIFFIN:

Q Did Airbus tell you what they raised with AWG?

A No.

Q Did you discuss a more proactive plan to counter FitzWalter's predatory attacks?

MR. SHAUGHNESSY: Objection.

THE WITNESS: I don't remember, but I don't think so. The situation is that we have single-aircraft owning SPCs, that if the lessee doesn't pay are vulnerable. And we did not -- I did not discuss any plan there because it would require something on a much larger scale, and there's not simply time enough. So it had -- no, I did not. It hasn't happened.

BY MR. GRIFFIN:

Q Did you approach Tim Myers?

MR. SHAUGHNESSY: Objection.

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2 THE WITNESS: No.

3 BY MR. GRIFFIN:

4 Q Did you say you intend to approach Tim  
5 Myers?

6 MR. SHAUGHNESSY: Objection.

7 THE WITNESS: I think I might have  
8 said that in an e-mail, but I did not  
9 talk to Tim Myers.

10 BY MR. GRIFFIN:

11 Q Why not?

12 A And I did not approach him.

13 Q Is there a reason why you decided not to  
14 approach Mr. Myers?

15 MR. SHAUGHNESSY: Objection.

16 THE WITNESS: Not that I remember.

17 BY MR. GRIFFIN:

18 Q Who is Tim Myers?

19 A The president of Boeing Capital, the  
20 president and CEO of Boeing Capital.

21 Q With respect to the bid procedures in  
22 this case, are the -- whatever assets the debtors  
23 own, are they being sold in one package?

24 A Yes, they are.

25 Q Why is that?

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2 A It is a deal we could get and it pays  
3 everybody --

4 Q Would you --

5 A Sorry.

6 Q Go ahead.

7 A And it pays everybody in full, my  
8 assumption.

9 Q Would you prefer to be able to sell them  
10 in pieces?

11 A Not necessarily. So I would not want to  
12 sell them -- no, I would not sell -- commercially  
13 speaking, I would not want to sell the assets without  
14 the leases. And whether we sell one now and then one  
15 five months later, it doesn't make a difference. The  
16 market right now is not bad for assets, more than  
17 technology aircraft.

18 I've participated on the buy side in ten,  
19 15, 20 RFPs, at least, in the last two years and they  
20 all were overbid by five times. So there's a lot of  
21 demand out there for new technology assets.

22 Q Did SVP want you to sell them in one  
23 package?

24 MR. SHAUGHNESSY: Objection.

25 THE WITNESS: The term sheet speaks

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2 for itself. It is a deal we could get.)

3 BY MR. GRIFFIN:

4 Q Do you know who decided to have the  
5 assets -- the requirement the assets be sold in one  
6 package?)

7 MR. SHAUGHNESSY: Objection.)

8 THE WITNESS: In the end, it was a  
9 decision between Teiji and myself, Teiji  
10 Ishikawa.)

11 BY MR. GRIFFIN:

12 Q Was it your preference initially to allow  
13 the assets to be sold in whole or in lots?)

14 A We had no -- we had no real preference.  
15 It would have been nice to have -- potentially, to  
16 have the assets have more time. That is a more  
17 important figure. But it is not -- but it's not even  
18 necessary.)

19 But it was not our preference to have the  
20 assets in lots with the one caveat that we do not  
21 want the leases, the lease claims, separated from the  
22 assets.)

23 Q You would have been happy to have the  
24 assets for the JPA 111 sold together, and then to  
25 also have the potential to have whatever assets there

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2 are for JPA No. 49 sold together, but not require  
3 them to be sold in one bucket; is that correct?

4 A So JPA 111, together 67, MSN, and the  
5 other JPA in one bucket, but it doesn't matter on  
6 whether it's in one go or not. We're confident it  
7 will go.

8 Q And it's correct, isn't it, that SVP  
9 wanted them all to be in one bucket, to be sold  
10 together, correct?

11 A It's what the term sheets reflects.

12 MR. SHAUGHNESSY: Objection.

13 BY MR. GRIFFIN:

14 Q Did you negotiate the break-up fee?

15 A I was involved in one conversation on the  
16 break-up fee with SVP.

17 Q What occurred during that conversation?

18 A I tried to lower it.

19 Q Why is that?

20 A Because based on the advice I got from  
21 our lawyers.

22 MR. SHAUGHNESSY: Wait. Don't say  
23 anything that reflects legal advice.

24 THE WITNESS: So based -- we felt  
25 that the -- initially, the 5 percent fee



1 H. LOECHTEKEN

2 was too high. We wanted to push it down  
3 and we could get it down to a 4 percent  
4 break-up fee.

5 BY MR. GRIFFIN:

6 Q At that time, you weren't speaking with  
7 any other potential stalking horse bidders, correct?

8 A Not on that detailed level.

9 Q Did you ever ask FitzWalter what they  
10 would be willing to purchase the assets for?

11 MR. SHAUGHNESSY: Objection.

12 THE WITNESS: No, I did not.

13 BY MR. GRIFFIN:

14 Q Before it was --

15 A For the reasons explained before. We  
16 felt that FitzWalter was not a friendly party, as  
17 they started this process without notifying us, so  
18 they didn't speak to us. Why would we turn around  
19 and then ask them, after they started this process,  
20 what they would pay for the assets.

21 That only happened when I was called by  
22 FitzWalter way later when they offered to match the  
23 stalking horse bid.

24 Q So you never talked with FitzWalter  
25 before or after filing bankruptcy until they reached

1 H. LOECHTEKEN

2 out to you about what FitzWalter would be able --

3 willing to do with respect to these assets?

4 MR. SHAUGHNESSY: Objection.

5 THE WITNESS: I think that is

6 correct.

7 BY MR. GRIFFIN:

8 Q There's a process in the transaction  
9 documents for selling the assets, correct?

10 A What exactly are you referring to?

11 Q Say in the event of a default, there's a  
12 process that everybody agreed to about how to resolve  
13 the assets, correct?

14 MR. SHAUGHNESSY: Objection. What  
15 documents are you talking about?

16 BY MR. GRIFFIN:

17 Q The proceeds agreement that appoints  
18 FitzWalter Capital as a security agent, correct?

19 MR. SHAUGHNESSY: Objection. Calls  
20 for a legal conclusion.

21 THE WITNESS: I'm not familiar with  
22 this -- I'm not -- and I can't interpret  
23 the legal situation.

24 MR. SHAUGHNESSY: Mr. Griffin, how  
25 much more time do you think you guys --

1 H. LOECHTEKEN

2 MR. GRIFFIN: I'm going to go  
3 through my outline and cross off  
4 everything. I think we're almost done  
5 here.

6 MR. SHAUGHNESSY: All right. Thank  
7 you. Are we going to take five minutes,  
8 ten minutes?

9 MR. GRIFFIN: Let's take five. I  
10 know it's getting late for Mr. Loechteken  
11 over there, so let's take five.

12 MR. SHAUGHNESSY: Okay. Great.

13 THE VIDEOGRAPHER: The time is 9:40  
14 p.m. We're off the record.

15 (Brief pause.)

16 THE VIDEOGRAPHER: The time is  
17 9:47 p.m., we're on the record.

18 MR. GRIFFIN: A few more questions.

19 BY MR. GRIFFIN:

20 Q What experience do you have with U.S.  
21 bankruptcy?

22 A I've been on the receiving end of U.S.  
23 bankruptcy in a couple of U.S. airlines bankruptcy  
24 processes and a couple of firm bankruptcy processes.  
25 I, myself, was not in bankruptcy.

1 H. LOECHTEKEN

2 Q Understood. So with respect to the  
3 businesses you were associated with, you said a  
4 couple of those have been in bankruptcy themselves or  
5 creditors in bankruptcy? What are you discussing  
6 there?

7 A Exposure that I, as an executive of  
8 various entities, had with U.S. airlines, mostly, or  
9 foreign airlines that went into Chapter 11 processes  
10 and bankruptcy.

11 Q In those circumstances, were you in a  
12 situation where you owned an asset and a company went  
13 into bankruptcy?

14 A Correct.

15 Q Have you ever been in a situation where  
16 your company has gone into bankruptcy?

17 A No, but I had a couple of near bankruptcy  
18 experiences with companies that were in financial  
19 difficulties where we were -- had to restructure debt  
20 and convert unsecured debt into senior secured debt  
21 and were living off three months waivers, and we had  
22 to institutionalize an asset sales program in  
23 between.

24 Q Earlier, we discussed the long-term lease  
25 renegotiations that you were going -- engaged in with

1 H. LOECHTEKEN

2 VNA around the, you know, fall of 2020, correct?

3 A Correct.

4 MR. SHAUGHNESSY: Objection.

5 THE WITNESS: I should clarify, I  
6 was not personally engaged. My Tokyo  
7 colleagues were engaged.

8 BY MR. GRIFFIN:

9 Q Thank you for the clarification.

10 So people from JPL were engaged in  
11 renegotiation discussions with VNA, right?

12 A Correct.

13 Q Did you expect the bankruptcy to assist  
14 in those discussions?

15 MR. SHAUGHNESSY: Objection.

16 THE WITNESS: I have no legal view  
17 on it. I think we were essentially done  
18 before. I don't know whether the  
19 bankruptcy will assist with this or not.

20 BY MR. GRIFFIN:

21 Q In this bankruptcy -- strike that.

22 During the bankruptcy, there's been no  
23 real additional discussions with VNA during the --  
24 relating to the lease negotiations, right?

25 MR. SHAUGHNESSY: Objection.

1 H. LOECHTEKEN

2 THE WITNESS: Not that I know of.

3 BY MR. GRIFFIN:

4 Q Do you know whether SVP is interested in  
5 having JPL re-engage with VNA about the lease  
6 negotiations?

7 MR. SHAUGHNESSY: Objection.

8 THE WITNESS: It is clear that SVP  
9 does not want us to enter into a lease,  
10 either, on MSN 150, and therefore the  
11 rest can't be entered into with, to begin  
12 with.

13 BY MR. GRIFFIN:

14 Q SVP is not interested in renegotiating a  
15 lease on the plane that's not in bankruptcy, correct?

16 A Correct.

17 MR. SHAUGHNESSY: Objection.

18 BY MR. GRIFFIN:

19 Q The plane that it purchased from the  
20 bank, correct?

21 MR. SHAUGHNESSY: Objection.

22 THE WITNESS: I don't really know  
23 what SVP, in the end, is interested in.  
24 They have asked us to stop negotiating  
25 with Vietnam.

1 H. LOECHTEKEN

2 BY MR. GRIFFIN:

3 Q So the bankruptcy wouldn't have assisted  
4 in the process of getting leases back in place,  
5 right?

6 MR. SHAUGHNESSY: Objection.

7 THE WITNESS: I don't think so

8 because I -- I believe, and I've seen  
9 that with other leasing companies, that  
10 Vietnam was in the process of agreeing  
11 lease restructurings with other leasing  
12 companies, as well, in the same way they  
13 were discussing with us.

14 So I think this is one process  
15 where Vietnam is effectively  
16 restructuring its leases, because other  
17 leases have been signed already, as would  
18 have been signed by now if not the  
19 Chapter 11 and SVP situation happened.

20 BY MR. GRIFFIN:

21 Q And it wasn't just FitzWalter's conduct  
22 that stopped the new leases from being signed,  
23 because there's a separate plane that FitzWalter  
24 doesn't have any relationship with, and the lease on  
25 that plane, the 150, also hasn't been resigned; is

1 H. LOECHTEKEN

2 that correct?

3 MR. GRIFFIN: Objection.

4 THE WITNESS: That lease has not  
5 been signed either, yet.

6 BY MR. GRIFFIN:

7 Q And, in fact, SVP does not want you to  
8 renegotiate the leases on either the 067173 or the  
9 510, right?

10 MR. SHAUGHNESSY: Objection.

11 THE WITNESS: That I can't really  
12 say because we have not had any  
13 discussions beyond this until we are  
14 effectively clear with what happens in  
15 the bankruptcy process.

16 BY MR. GRIFFIN:

17 Q In fact, the APA prevents you from  
18 talking to VNA about the leases, right?

19 MR. SHAUGHNESSY: Objection.

20 THE WITNESS: Yes.

21 BY MR. GRIFFIN:

22 Q And we had cross talk, so let's do that  
23 again.

24 The APA prevents you from talking to VNA  
25 about the leases, correct?



1 H. LOECHTEKEN

2 MR. SHAUGHNESSY: Objection.

3 THE WITNESS: The APA says what it

4 says.

5 BY MR. GRIFFIN:

6 Q You said yes last time. Is that -- are

7 you able to talk to VNA about the leases?

8 MR. SHAUGHNESSY: Objection.

9 THE WITNESS: From my

10 understanding, we are not, at this stage.

11 BY MR. GRIFFIN:

12 Q With respect to the -- strike that.

13 Earlier we discussed the break-up fee,

14 correct?

15 A Uh-huh.

16 (Loechteken Exhibit No. 8 was

17 marked for the record.)

18 BY MR. GRIFFIN:

19 Q I added Exhibit No. 8 to the folder, and

20 it's the Bidding Procedures Order. It's 2021.12.31,

21 if you look in the file name there.

22 MR. SHAUGHNESSY: What's the title?

23 MR. GRIFFIN: It should be

24 2021.21.12.31-Docket 21. It should be

25 the very top document in the folder.

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2 MR. SHAUGHNESSY: I apologize. My  
3 computer -- this part of the website is  
4 freezing on me. I've got to sign back  
5 in. I don't know why.

6 MR. GRIFFIN: This is going to be  
7 the last question.

8 MR. SHAUGHNESSY: Bad timing,  
9 sorry.

10 MR. GRIFFIN: No worries.

11 THE WITNESS: It's really slow for  
12 me, as well.

13 MR. SHAUGHNESSY: I'm sorry, Mr.  
14 Griffin. What's the title of the  
15 document?

16 MR. GRIFFIN: It should be the very  
17 first document in the folder. It's  
18 2021.12.31 DKT 21 Bidding Procedures  
19 Order.

20 Do you see that?

21 MR. SHAUGHNESSY: I got it. It was  
22 number three on my list, so --

23 MR. GRIFFIN: Oh, sorry.

24 MR. SHAUGHNESSY: Whether it was  
25 alphabetical or not.

1 H. LOECHTEKEN

2 MR. GRIFFIN: The sorting must be  
3 different in our respective folders.

4 MR. SHAUGHNESSY: Mr. Loechteken,  
5 do you have it?

6 THE WITNESS: I have it, yeah.

7 BY MR. GRIFFIN:

8 Q Can you go down to the page that -- if  
9 you look at the numbers on top, it's going to be page  
10 18 of 29.

11 MR. SHAUGHNESSY: Take your time to  
12 review the document, if you'd like to.

13 MR. GRIFFIN: Of course, yes.

14 THE WITNESS: My computer is very  
15 slow on that page. Page 14. Okay.  
16 Eighteen of 29.

17 BY MR. GRIFFIN:

18 Q Actually, if you scroll back up to the  
19 prior page, I just want to put it in context. It's  
20 Section 5, Stalking Horse Bidders' Protection is what  
21 this section is.

22 And if you go down to, again, page 18 of  
23 29, the first full paragraph, you see that it's  
24 beginning with, The break-up fee.

25 Do you see that?

1 H. LOECHTEKEN

2 A Uh-huh, yeah.

3 Q And, obviously, take your -- why don't  
4 you take your time to read this paragraph and I'll  
5 ask you a question about it.

6 Have you got it?

7 A Yeah. I'm not sure I understand it, but  
8 I've gone through it.

9 Q Let's find out.

10 So if you read this paragraph, it says:  
11 The break-up fee and expense reimbursement shall be  
12 due and payable upon --

13 And there's a bunch of subsections here.  
14 I want to go to the third romanette, small I, small  
15 I, small I.

16 Do you see that. It's a -- it's six  
17 lines down?

18 A Yeah.

19 Q Okay. So it says: The break-up fee and  
20 expense reimbursement shall be due and payable  
21 upon -- and you go to romanette 3 -- the debtors  
22 breaching their obligations under the stalking horse  
23 purchase agreement, including without limitation, A,  
24 by withdrawing from the transaction -- and then I'm  
25 going to skip over the parenthetical -- B, by failing

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to meet their time of the essence obligations under the stalking horse purchase agreement, it being understood that the timing provisions of these bidding procedures shall constitute an agreement by the debtor and the stalking horse bidders of the dates provided for herein.

And then it says: Or, C, changes having being made to the bidding procedures or other terms agreed by the parties as part of the bidding procedures order, except for changes agreed upon in writing by the buyer, which consent shall not be unreasonably withheld.

Do you see that?

A I'm a bit slow at reading. Yes, I see that.

Q So the stalking horse break-up fee is payable even if there's not a sale to another entity; is that correct?

MR. SHAUGHNESSY: Objection.

THE WITNESS: As of a breach of the obligation, I think, yes.

BY MR. GRIFFIN:

Q If you don't sell the assets to someone else, where does the money come to pay -- come from

1 H. LOECHTEKEN

2 to pay the break-up fee?

3 MR. SHAUGHNESSY: Objection.

4 THE WITNESS: So I -- I've been  
5 advised that this --

6 MR. SHAUGHNESSY: Stop.

7 THE WITNESS: No, stop.

8 MR. SHAUGHNESSY: You can't reveal  
9 any advice from legal counsel. If your  
10 understanding is based on the advice of  
11 legal counsel, I instruct you not to  
12 answer.

13 BY MR. GRIFFIN:

14 Q Are you accepting your counsel's  
15 instruction.

16 A I accept it.

17 Q So you don't know where the money would  
18 come from without divulging your counsel's  
19 information, correct?

20 A Correct.

21 MR. GRIFFIN: I have no further  
22 questions.

23 MR. SHAUGHNESSY: Okay. Justin, do  
24 you want me to give you a call quickly  
25 about outstanding matters?

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MR. GRIFFIN: Sure.

MR. SHAUGHNESSY: We're off the  
record, right?

MR. GRIFFIN: Yeah, let's go off  
the record.

THE VIDEOGRAPHER: The time is  
10:01 p.m. We're off the record.

(Thereupon, the deposition was  
concluded at approximately 10:01 p.m.)

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HEINRICH LOECHTEKEN

Subscribed and sworn to before me  
this\_\_\_\_\_ day of\_\_\_\_\_, 2022.

C E R T I F I C A T E

STATE OF GEORGIA:

FULTON COUNTY:

I hereby certify that the foregoing deposition was reported, as stated in the caption, and the questions and answers thereto were reduced to written page under my direction, that the preceding pages represent a true and correct transcript of the evidence given by said witness.

I further certify that I am not of kin or counsel to the parties in the case, am not in the regular employ of counsel for any of said parties, nor am I in any way financially interested in the result of said case.

Dated this 24th day of January,  
2022.

*Tanya L. Verhoven-Page*

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Tanya L. Verhoven-Page,  
Certified Court Reporter,  
B-1790.



1 NAME OF CASE:

2 DATE OF DEPOSITION:

3 NAME OF WITNESS:

4 Reason Codes:

5 1. To clarify the record.

6 2. To conform to the facts.

7 3. To correct transcription errors.

8 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

9 From \_\_\_\_\_ to \_\_\_\_\_

10 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

11 From \_\_\_\_\_ to \_\_\_\_\_

12 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

13 From \_\_\_\_\_ to \_\_\_\_\_

14 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

15 From \_\_\_\_\_ to \_\_\_\_\_

16 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

17 From \_\_\_\_\_ to \_\_\_\_\_

18 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

19 From \_\_\_\_\_ to \_\_\_\_\_

20 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

21 From \_\_\_\_\_ to \_\_\_\_\_

22 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

23 From \_\_\_\_\_ to \_\_\_\_\_

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25 \_\_\_\_\_